

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

TRUE THE VOTE, JANE COLN, BRANDIE CORRERO,
CHAD HIGDON, JENNIFER HIGDON, GENE HOPKINS,
FREDERICK LEE JENKINS, MARY JENKINS, TAVISH
KELLY, DONNA KNEZEVICH, JOSEPH KNEZEVICH,
DORIS LEE, LAUREN LYNCH, NORMA MACKEY, ROY
NICHOLSON, MARK PATRICK, JULIE PATRICK,
PAUL PATRICK, DAVID PHILLEY, GRANT SOWELL,
SYBIL TRIBBLE, LAURA VANOVERSCHELDE, AND
ELAINE VECHORIK

PLAINTIFFS

v.

CIVIL ACTION NUMBER 3:14CV532-NFA

THE HONORABLE DELBERT HOSEMAN, IN HIS
OFFICIAL CAPACITY AS SECRETARY OF STATE FOR
THE STATE OF MISSISSIPPI, THE REPUBLICAN PARTY
OF MISSISSIPPI, COPIAH COUNTY, MISSISSIPPI
ELECTION COMMISSION, HINDS COUNTY,
MISSISSIPPI ELECTION COMMISSION, JEFFERSON
DAVIS COUNTY, MISSISSIPPI ELECTION
COMMISSION, LAUDERDALE COUNTY,
MISSISSIPPI ELECTION COMMISSION, LEAKE
COUNTY, MISSISSIPPI ELECTION COMMISSION,
MADISON COUNTY, MISSISSIPPI ELECTION
COMMISSION, RANKIN COUNTY, MISSISSIPPI
ELECTION COMMISSION, SIMPSON COUNTY,
MISSISSIPPI ELECTION COMMISSION, AND
YAZOO COUNTY, MISSISSIPPI ELECTION COMMISSION

DEFENDANTS

EVIDENTIARY HEARING

BEFORE THE HONORABLE NANCY F. ATLAS
UNITED STATES DISTRICT JUDGE
JULY 24TH, 2014
JACKSON, MISSISSIPPI

REPORTED BY: MARY VIRGINIA "Gina" MORRIS, RMR, CRR
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MR. HAROLD EDWARD PIZZETTA, III
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FOR THE REPUBLICAN PARTY:

MR. MICHAEL B. WALLACE
MR. THORNTON RUSSELL NOBILE

FOR COPIAH COUNTY, MISSISSIPPI ELECTION COMMISSION:

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FOR HINDS COUNTY, MISSISSIPPI ELECTION COMMISSION:

MR. PIETER TEEUWISSEN
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FOR JEFFERSON DAVIS COUNTY, MISSISSIPPI ELECTION COMMISSION:

MR. ROBERT E. SANDERS
MR. JOHN WESLEY DAUGHDRILL, JR.

FOR LAUDERDALE COUNTY, MISSISSIPPI ELECTION COMMISSION:

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FOR RANKIN COUNTY, MISSISSIPPI ELECTION COMMISSION:

MR. CRAIG SLAY

FOR SIMPSON COUNTY, MISSISSIPPI ELECTION COMMISSION:

MR. DANNY WELCH

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1 (COURT CALLED TO ORDER)

2 THE COURT: Please be seated. Good morning.

3 (ALL RESPONDED "Good morning")

4 THE COURT: I'm happy to be here in Jackson,
5 Mississippi. This is the case of True the Vote, and others
6 against The Honorable Delbert Hosemann, or Hoseman, in his
7 official capacity as Secretary of State and then others. Would
8 counsel please state your appearances. And I need to hear from
9 plaintiffs first.

10 MR. NIXON: Good morning, your Honor. I'm Joe Nixon
11 from Houston, and I represent the plaintiff. If I could -- do
12 you want me to introduce our team?

13 THE COURT: I'd like them to speak.

14 MR. NIXON: Thank you.

15 MS. McDANALD: Kristen McDanald for the plaintiff.

16 MR. HOGUE: Your Honor, I am Eades Hogue, also for the
17 plaintiffs.

18 MR. TRAINOR: Your Honor, Trey Trainor for the
19 plaintiffs.

20 MS. LEONARD: Your Honor, Kelly Leonard for the
21 plaintiffs.

22 THE COURT: Okay. Defense.

23 MR. PIZZETTA: Good morning, your Honor. I am
24 Assistant Attorney General Harold Pizzetta here on behalf of
25 Secretary of State Delbert Hosemann.

1 MR. MATHENY: My name is Justin Matheny. I'm a
2 Special Assistant Attorney General here on behalf of Secretary
3 Hosemann.

4 MR. SANDERS: Your Honor, my name is Bob Sanders. I
5 represent Jefferson Davis County. And there will another
6 fellow -- he'll be here a little bit later -- his name is Wes
7 Daughdrill. He's also co-counsel.

8 MR. THAGGARD: Your Honor, my name is Lee Thaggard. I
9 represent the Lauderdale County Election Commission.

10 MR. NOBILE: Good morning, your Honor. Russell Nobile
11 for the Mississippi Republican Party.

12 MR. WALLACE: Mike Wallace, your Honor. I'm general
13 counsel for the Mississippi Republican Party.

14 MR. SLAY: Your Honor, I'm Craig Slay. I'm here on
15 behalf of the Rankin County Election Commission.

16 MR. ESPY: Good morning, your Honor. I'm Mike Espy
17 county's counsel for Madison County.

18 MR. FLATGARD: Good morning, your Honor. Spence
19 Flatgard for the Madison County Election Commission.

20 MR. TEEUWISSEN: Good morning, your Honor. Pieter
21 Teeuwissen, Hinds County Election Commission, Hinds County
22 also.

23 MR. SIMON: Anthony Simon, Hinds County and Hinds
24 County Election Commission.

25 MS. MUNN: Your Honor, I'm Elise Munn for the Copiah

1 County Election Commission.

2 MR. WEBB: Your Honor, Jeff Webb, Leake County
3 Election Commission.

4 MR. WELCH: Your Honor, Danny Welch, Simpson County
5 Election Commission.

6 THE COURT: All right. Thank you all. As I explained
7 in a telephone conference last week, today is a hearing date
8 for the parties to make a record on matters that either you
9 think are very important that are not already established by
10 the papers and for me to get information so that I can be using
11 the same terminology you are and that the record will be clear
12 about what we're referring to when we make argument about
13 various types of documents and various processes, et cetera.

14 On the phone it became apparent that the parties were
15 not that far apart on many issues but are very far apart on
16 certain fundamental questions of law. I've given time limits
17 which are designed to get everyone to focus. I'm less
18 concerned about an hour being 60 minutes than I am about
19 finishing this hearing today.

20 I have read the materials that have been submitted,
21 the bill of particulars, the listing and the booklet of
22 evidence that the plaintiffs submitted. I have seen the --
23 with the attachments. Defense has not presented any evidence
24 that I'm aware of. They're not late. I gave -- I told you we
25 would set a more specific schedule on briefing today. It will

1 be an expedited process. But I am here to see and have
2 exchanges with you on the factual matters that we need in order
3 to join issue and then for me to decide this case.

4 Technically, the case is about what documents can be
5 seen in order for the public and for the principle of
6 transparency to be accomplished with regard to the accuracy and
7 currency of voter eligibility lists. This is not a case about
8 voter fraud. It's a case about whether the National Voter
9 Registration Act has been complied with and whether or not that
10 act preempts some or all of very specific statutes enacted by
11 the Mississippi Legislature.

12 So this is a pretty dry case. There are obviously
13 implications that are serious for another day and another case,
14 but right now the issue is whether or not the people and the
15 public who request documents from voter or election commissions
16 and registrars, other official entities, the State can obtain
17 copies of those records at a reasonable cost or otherwise
18 inspect them and whether or not some redaction is required.

19 There was a request for a temporary restraining order.
20 The defense -- well, the restraining order request was to avoid
21 any destruction or alteration of voter eligibility lists or
22 other documents that were being requested. The defense
23 representatives committed to me on the telephone conference,
24 which was on the record, that no disruption or alteration would
25 occur. And so the immediacy of the TRO, the temporary

1 restraining order, was alleviated.

2 It's my concept -- and, again, I will give the
3 opportunity to each of the lawyers, but it is my belief and
4 concept that this is a preliminary injunction hearing. And I
5 would like each of those lawyers to let me know if there's a
6 need for any further hearings or whether we can combine this
7 hearing, assuming everyone gets to put on the critical evidence
8 either in writing or orally that they want, whether we can
9 combine this with the hearing on the merits.

10 You don't have to have a definitive answer at the
11 beginning of this hearing, but I will tee that question up.
12 I'm going to be asking you at the end of the hearing that very
13 question. If you have an opinion at this time, you certainly
14 may give it to me. Mr. Nixon, are you the lead lawyer for
15 plaintiff?

16 MR. NIXON: Yes, your Honor.

17 THE COURT: Plaintiffs. Okay. Is it your concept
18 that this is a preliminary injunction hearing?

19 MR. NIXON: Yes.

20 THE COURT: Okay. Do you have an opinion on whether
21 or not a further hearing on the merits will be necessary?

22 MR. NIXON: In light of the court's preliminary
23 comment, I believe most of what we need to do can be joined
24 today. However, there is a vote dilution claim under the
25 Fourteenth Amendment. So that issue I don't believe can be

1 addressed at this time.

2 THE COURT: You have an Equal Protection claim. Is
3 that your -- and that is the voter dilution?

4 MR. NIXON: Yes.

5 THE COURT: That claim is not -- it's not clear
6 exactly, frankly, what the claim asserts with regard to there
7 being a right controversy.

8 MR. NIXON: Well, we've -- excuse me, your Honor. I
9 think we've already put into evidence the fact that there have
10 been several illegal votes, double votes, and --

11 THE COURT: I don't believe -- I'm not sure of that.
12 I think the evidence that I recall -- and you can refresh me --
13 that is that the voter registration number, the ID number, did
14 not match the ID number of the person who voted. And there was
15 one where an absentee ballot was not opened, one -- a couple of
16 absentee ballots weren't opened, by the way, in counties that
17 are not represented here.

18 MR. NIXON: Right.

19 THE COURT: So I'm just unclear about the voter
20 dilution thing or the evidence that you're referring to.

21 MR. NIXON: All right. If I may take a moment just to
22 explain. Every lawful voter has a right to have their vote
23 given the full weight of a lawful vote. And when you have
24 illegal votes, it dilutes lawful votes, regardless of where in
25 the state an illegal vote occurred.

1 So in this instance -- and I believe we've submitted
2 to the court evidence that -- that we know now. Two or three I
3 think -- and counsel for Jeff Davis County I think can confirm
4 that they counted three double votes, someone who voted in one
5 primary and then switched and voted in the Republican primary
6 in the runoff. Those were -- those votes diluted three lawful
7 votes in the rest of the county -- the rest of the state. So
8 the question --

9 THE COURT: Well, how do you calculate three lawful
10 votes? What I -- the way I calculate it is you would -- you
11 would consider the total number of votes in the Republican
12 runoff, and then you would measure that against the three
13 unlawful votes or assumed unlawful votes.

14 MR. NIXON: Right. We're not -- we're not here about
15 three votes.

16 THE COURT: Exactly. I don't think it's a one to one.
17 I think it's the universe against the number of unlawful votes.

18 MR. NIXON: That's right. So what the records will
19 show us -- if the records are able to be obtained, the records
20 will show us basically we're going to either debunk the myths
21 or prove up a problem. And we'll know the extent of the
22 problem and the -- and we're not here telling the court that
23 the court -- there's a big enough problem for the court --

24 THE COURT: Sure.

25 MR. NIXON: -- to do anything, but we had to allege

1 the vote dilution claim to give immediacy and expedience to the
2 records issue --

3 THE COURT: Okay.

4 MR. NIXON: -- because -- because in -- I mean, this
5 happened in Mississippi before and just happened a few months
6 ago where a new election was ordered because the margin of
7 victory was close, and there was a problem with so many votes
8 that the court ordered a new election for I think a mayor's
9 race.

10 I am not representing to you that we anticipate
11 finding a problem. I just don't know. But we have to look
12 at -- we have to obtain the records, do the analysis. And our
13 client, True the Vote, is an expert in doing this. And we will
14 know. So maybe -- and the reason why I can't make a case on
15 the merits, because I may want to come back to you and say, *We*
16 *have a big problem, but, thankfully, Judge, there's not enough*
17 *of a problem for --*

18 THE COURT: Okay. Fair enough.

19 MR. NIXON: -- *further attention.*

20 THE COURT: So that -- because, honestly, that third
21 claim is questionably not ripe, frankly. But I hear what
22 you're saying and that is that let's just put that aside and
23 that's not to be dealt with in this preliminary injunction
24 hearing. But that is the reason why you believe that the case
25 on the merits cannot be addressed --

1 MR. NIXON: That's correct.

2 THE COURT: -- fully at this stage. Fair enough.
3 Thank you. Does the defense have any comment, number one,
4 on -- well, on each of my questions?

5 MR. PIZZETTA: Your Honor, Harold Pizzetta. I think
6 the question of ruling on the merits, I do think it's not
7 something that the Secretary of State would be willing to agree
8 to at this point. Voter dilution points are good ones. We
9 agree there's more to be developed there.

10 Secondly, though, we've come to find out there's
11 testimony that's going to be possibly presented today that
12 wasn't previously disclosed in the bill of particulars. So
13 we're not sure yet what our universe of facts truly is. But we
14 do share the court's concern about getting this resolved in an
15 expedited matter.

16 Our thought is there could be a summary judgment
17 motion that might be more timely, that -- one of those where it
18 could end the case. It may not, but it very well could. But
19 it would leave open the possibility that something else might
20 have to happen.

21 THE COURT: Okay. Well, let's just leave it, then,
22 that at least as to that third claim, it's to be decided later
23 as to when and how to take it up.

24 With regard to the first two claims, namely, the
25 National Voter Registration Act claim, both by the institution

1 of the organization and by the individuals, those are what our
2 focus will be today. And, frankly, depending on what the
3 evidence is, we'll revisit this question of whether those
4 claims require additional evidence on the merits compared to
5 the preliminary injunction. We'll do that down the road.
6 Okay.

7 I'm going to just throw out to you a couple of issues
8 that I have a bigger picture, and then I'm going to let the
9 parties put on their evidence. First of all, I need evidence
10 on exactly what documents are in issue. I don't know
11 technically, physically, what a polling book is. I could
12 guess. I know in Texas what they likely are. But I don't want
13 to do that. This is a subject of evidence.

14 Second, True the Vote, I'm unclear what its standing
15 is as opposed to the individuals. Third, I am under the
16 impression from all of the materials I've read that the
17 plaintiffs want the birth dates and addresses and, of course,
18 names of voters, maybe additional information. It's unclear.
19 But they are not asking for Social Security numbers. Is that
20 true?

21 MR. NIXON: That's correct. We are not asking for
22 Social Security numbers.

23 THE COURT: All right. Frankly, for what it's worth,
24 I think that's a good move. Well, I think it simplifies
25 arising out of the Fourth Circuit case and, frankly, general

1 policy.

2 The case is about transparency of the voting process
3 and electoral registration and eligibility lists. But there is
4 a countervailing principle of voter privacy. I don't think
5 anyone in this room wants to squelch votes because of
6 unnecessary disclosures.

7 Back to my issues, I am going to want to know, not
8 necessarily today, but in short order, if there are other
9 lawsuits filed, pending or decided on the issue of the National
10 Voting records business -- Registration Act. I'm interested --
11 True the Vote seems to be an organization that is on a mission,
12 and there may be other organizations of that same ilk. And so
13 I am interested in knowing if there are other challenges
14 underway. It's more of a curiosity point, but it is also
15 something that we should get out on the table.

16 Okay. Those were my sort of overriding questions in
17 and around the merits.

18 I'm going to let you, Mr. Nixon, go first. It is my
19 belief -- I gave you an hour. It is my belief that you should
20 be able to meet that or something darn close to it if you're
21 efficient.

22 Let me ask defense, is there -- I assume that
23 plaintiffs want to put into this hearing record everything that
24 has been submitted in writing, specifically your bill of
25 particulars evidence and --

1 MR. NIXON: And our exhibits, yes.

2 THE COURT: -- and your exhibits.

3 MR. NIXON: Yes.

4 THE COURT: Right. Is there an objection from any of
5 the defense attorneys on us incorporating that business into
6 the record? Go ahead.

7 MR. PIZZETTA: Your Honor, I think there is. I think
8 much of what is encompassed in that big stack is hearsay and
9 is -- it fails any indicia of reliability. I know from
10 previous decisions this court has looked at that issue in
11 preliminary injunction context.

12 THE COURT: Sure.

13 MR. PIZZETTA: And I think that the way the court
14 stated it was a good way, is the rules still apply even in a
15 preliminary injunction context, and reliability is the key. So
16 I think that as a blanket matter, we have objections to those
17 documents.

18 THE COURT: Well, what I was thinking we could do was
19 introduce these things, because, frankly, they're in the court
20 record already. Then if you want to call any of those
21 witnesses for cross-examination purposes, you may do that. The
22 concerns you have, in my book, technically go to weight.

23 The written request to the counties or these incident
24 reports, those documents exist and are records that have been
25 presented to the counties or are -- well, I'm not sure how

1 exactly the incident reports are created. That is part of your
2 problem, I suspect. But the whole point is, they have been
3 created and they are in this record. So I would like to hear
4 your concerns through evidence in the form of
5 cross-examination. Whether we call it voir dire for
6 admissibility purposes or not, I'll decide after the fact.

7 MR. PIZZETTA: Yes, your Honor.

8 MR. SANDERS: Your Honor, if I could, for Jeff Davis
9 County, we would join the State's hearsay objection; but we
10 also object to much of the -- the exhibits on the basis of
11 relevancy. A lot of these exhibits detail what the plaintiffs
12 or the plaintiffs' volunteers did and conversations they had
13 with circuit clerks who are not parties. And as far as I'm
14 concerned, they might as well have been talking to the local
15 Ford dealer. But we just think that the conversations and
16 things done and not done with the circuit clerk are not
17 relevant to establishing any cause of action against the
18 election commission.

19 THE COURT: Okay.

20 MR. SANDERS: If I could say one other thing, your
21 Honor.

22 THE COURT: I don't really follow that, frankly. But
23 you represent Jeff Davis County. Right?

24 MR. SANDERS: That's correct.

25 THE COURT: So let's stick, for your purposes, to Jeff

1 Davis County, and I will hear you on that. Okay?

2 MR. SANDERS: Do you want me to save the objections
3 until later?

4 THE COURT: I'm happy for you to make objections that
5 Jeff Davis County -- I was looking at the State for a broader
6 response. From the perspective of the individual counties, I
7 don't think there should be 20 lawyers representing everybody.
8 That would be unwieldy.

9 I'm proposing that the county lawyers represent their
10 individual interests to the extent they differ from the State's
11 attorney or State's interests or Republican Party's interest to
12 the extent they should even be in this case.

13 So I hear what you're saying is your concern, and you
14 have mentioned that before. And I am interested in
15 understanding what your concerns are because different counties
16 may be set up differently, and I need the specifics.

17 MR. SANDERS: Yes, your Honor. I just wanted to add
18 that to the relevancy objection. And part of the basis of that
19 is the plaintiffs have argued that the circuit clerks are sort
20 of like ex officio members of the election commission. They
21 are not. And at some point we'd like to be heard on that
22 joint.

23 THE COURT: Fair enough.

24 MR. WALLACE: Your Honor?

25 THE COURT: Yes, sir.

1 MR. WALLACE: The Republican Party --

2 THE COURT: When you speak, at least at the beginning,
3 for the benefit of the court reporter, will you state your
4 name?

5 MR. WALLACE: Mike Wallace for the Republican Party,
6 your Honor. The Party joins Secretary Hosemann's hearsay
7 objection. And I will say we came here today prepared to deal
8 with nine exhibits on their list and six witnesses.

9 THE COURT: Okay.

10 MR. WALLACE: And if they want to do more than six
11 witnesses, I'm old enough to examine witnesses I've never seen
12 before. That's fine. I want the show to get on the road.
13 What I don't want to do is to agree to the admissibility of
14 documents written by people who are not here to be
15 cross-examined.

16 THE COURT: Well, to the extent there is some concern
17 on that, I'm going to let you make that record; but we have to
18 do that document by document.

19 MR. WALLACE: Yes, ma'am. And I want to answer your
20 question about other cases. I don't know whether -- it doesn't
21 have to do with the National Voters case. I don't know whether
22 you --

23 THE COURT REPORTER: The what case?

24 MR. WALLACE: It doesn't have anything to do with the
25 National Voter Registration Act. I don't know whether the

1 court is aware that the Supreme Court of Mississippi last week
2 clarified the Public Records Act.

3 THE COURT: I did read that. Thank you.

4 MR. WALLACE: And so I don't know how many witnesses
5 we need to establish what happened out in the counties. The
6 counties are behaving as the Supreme Court has told them to
7 behave. And I think there's a legal question for your Honor
8 but probably not a factual question on that.

9 THE COURT: Okay. Fair enough. And that's the kind
10 of thing that we're going to put in -- you're going to put into
11 your briefs. But yes.

12 MR. WALLACE: Yes.

13 THE COURT: Are you referring to the *McDaniel* case --

14 MR. WALLACE: Yes, ma'am.

15 THE COURT: -- the Supreme Court ruled on? It is a
16 mandamus.

17 MR. WALLACE: It is a mandamus.

18 THE COURT: And it's been decided. And so is there
19 more going on in that case?

20 MR. WALLACE: A petition for rehearing has been filed,
21 and my friend Mr. Pizzetta represents the State. He'd know
22 more about it than I do.

23 THE COURT: Okay.

24 MR. WALLACE: I do not believe the petition for
25 rehearing has been resolved yet.

1 THE COURT: I've not seen --

2 MR. PIZZETTA: I don't believe so, your Honor. We've
3 not seen a final on that.

4 THE COURT: Okay. But that's a matter of state law.

5 MR. WALLACE: Yes, ma'am. I just think we may not
6 need to establish over and over again that circuit clerks are
7 acting consistently with that opinion. In other words, the
8 question --

9 THE COURT: I agree with you 100 percent on that.
10 Okay. Mr. Nixon, we've drawn an objection to the documents in
11 your bill of particulars. And the objection boils down to not
12 just hearsay but lack of authenticity and, frankly, lack of
13 foundation.

14 MR. NIXON: Yes, your Honor.

15 THE COURT: So do you have a witness?

16 MR. NIXON: Yes. The president of True the Vote,
17 Catherine Engelbrecht, will testify that they train volunteers.
18 They hand -- as part of the training, they hand them incident
19 reports. The volunteers go --

20 THE COURT: Okay. This is time for testimony as
21 opposed to a proffer.

22 MR. NIXON: Right.

23 THE COURT: Would you like --

24 MR. NIXON: Would you like to have her testify at this
25 point?

1 THE COURT: Yes.

2 MR. NIXON: Well, then we would call Catherine
3 Engelbrecht.

4 MR. SANDERS: Your Honor, we would like the rule
5 invoked.

6 THE COURT: The rule?

7 MR. SANDERS: Yes.

8 THE COURT: Who are your other witnesses? I do have a
9 witness list from you, but I'm getting wind that there may be
10 witnesses that are additions.

11 MR. NIXON: They are all right here.

12 THE COURT: Okay.

13 MR. NIXON: We have two of the plaintiffs. So I
14 would -- I assume that they are allowed to stay.

15 THE COURT: Yeah. If they're a party, yes.

16 MR. NIXON: Mr. Phillips will not be testifying, but
17 he's on the board of True the Vote. Of course, Catherine.
18 Then we have two witnesses who are nonparties who would then be
19 asked to sit outside.

20 THE COURT: Okay. If you are not a party and you've
21 been notified you are a witness, please step outside.

22 (COMPLIED WITH REQUEST)

23 THE COURT: Thank you.

24 MR. PIZZETTA: On behalf of the State, we have one
25 possible witness that we may call. So we'll have her step out

1 too. We also have our official client representative in place
2 of Secretary Hosemann, Kim Turner, who is designated as a
3 witness by the other side; but we'd like her to remain as our
4 representative.

5 MR. NIXON: No objection, your Honor.

6 THE COURT: She may remain. Okay. So if you're a
7 witness and not the designated representative for the defense,
8 step out. Thank you. All right. Would you step up to the
9 witness box, please, Ms. -- is it Engelhart? Engelbrecht?

10 THE WITNESS: Engelbrecht, yes, ma'am.

11 THE COURT: And raise your right hand.

12 (WITNESS SWORN)

13 THE COURT: Would you state and spell your whole name
14 for the record, please.

15 THE WITNESS: Yes, ma'am. Catherine Engelbrecht,
16 C-A-T-H-E-R-I-N-E, last name, E-N-G-E-L-B-R-E-C-H-T.

17 THE COURT: You may proceed.

18 **CATHERINE ENGELBRECHT,**
19 having first been duly sworn, testified as follows:

20 **DIRECT EXAMINATION**

21 BY MR. NIXON:

22 Q. Ms. Engelbrecht, what is your relationship with True the
23 Vote?

24 A. I'm the president and founder.

25 Q. What is True the Vote?

1 THE COURT: Keep your voice up and be a little closer
2 to the mic, please. You're the president and what?

3 A. The founder.

4 THE COURT: Founder.

5 BY MR. NIXON:

6 Q. What is True the Vote?

7 A. True the Vote is a nonpartisan, nonprofit organization, the
8 nation's largest voters rights and election integrity
9 organization.

10 Q. Are you active in the state of Mississippi?

11 A. Yes.

12 Q. Are you active in other states?

13 A. Yes.

14 Q. How many states?

15 A. Well, we have volunteers in all 50 states.

16 Q. Could you describe the activities of True the Vote?

17 A. Yes. True the Vote essentially does three things. We
18 provide training for volunteers -- for citizens who want to
19 serve as volunteers inside of the elections process. And there
20 are so many ways that citizens can get involved. So we
21 encourage that. We provide research, looking at voter rolls
22 and, frankly, to try to do what we attempted to do here in
23 Mississippi, is just to verify the veracity --

24 THE COURT: Speak a little slower. I don't know how
25 the court reporter is possibly going to get this down. Go

1 ahead.

2 A. Absolutely. Well, we provide training to citizens who want
3 to participate in elections. We provide research, looking at
4 the nation's voter files, which are public record, and
5 encouraging citizens to look at their own county's voter files,
6 their own local voter files, to determine the accuracy, the
7 veracity of the registry.

8 And then we provide support just for people who are
9 concerned about election integrity in their communities. We
10 provide assistance with voter registration, assistance to
11 people who need identification in states where they require
12 identification. So that's -- that's really the fullness of it.

13 Q. Do you provide training to your volunteers?

14 A. Yes, sir.

15 Q. Why did you come to Mississippi?

16 A. Well, initially, we came because we were -- we were
17 receiving an onslaught of inquiries to us from Mississippi
18 voters saying they're concerned about what they had just
19 experienced in the primary and were concerned about whether or
20 not their vote would be counted based upon things that they
21 felt like they saw. And so we really came just to see whether
22 or not there was any fact to that.

23 Q. When you came, did you notify both the McDaniel and the
24 Cochran campaigns, as well as the state GOP and then the
25 Democrat candidate campaign?

1 A. Yes, sir. We sent -- I sent letters to all four via e-mail
2 and fax to let them know that we'd be glad to talk with them or
3 work with them or, you know, anything.

4 Q. You were offering your services of True the Vote to each of
5 the campaigns in order to help them make sure that the vote was
6 valid?

7 A. Well, or just to -- we can't work directly with the
8 campaign, but just to let them know that we were there and, you
9 know, there would be -- there are interested people who would
10 be willing to work with them if that was, you know, something
11 that those parties would be interested in.

12 Q. As part of your efforts on True the Vote, did you ask for
13 records prior to the June 26th GOP runoff?

14 A. Let me think about that. Well, we have the state's voter
15 files, yes. So we did have those records already in place.
16 And we were trying to determine what else we would be able
17 to -- to look at.

18 Q. Did you go to three counties?

19 A. Yes.

20 Q. Which counties?

21 A. Well, I went to Hinds and to Rankin and to Panola.

22 Q. And what did you ask of Hinds County?

23 A. Well, in Hinds County I asked for the -- I'd like to see --
24 I asked if I could see the absentee ballot applications and
25 envelopes.

1 THE COURT: What was the last county you went to?
2 Hinds, Rankin and what?

3 MR. NIXON: Panola.

4 A. Panola.

5 THE COURT: Panola?

6 MR. NIXON: P-I-N --

7 MR. SANDERS: No, P-A-N-O-L-A.

8 MR. NIXON: I'll leave it to (indicating) for the
9 spelling.

10 THE COURT: Okay. Thank you.

11 BY MR. NIXON:

12 Q. Did you also go -- well, did you make any request of Rankin
13 County?

14 A. Yes, a similar request, just asked to see absentee ballot
15 applications and envelopes.

16 Q. Was your request granted or denied?

17 A. Denied.

18 Q. In Hinds County, was it granted or denied?

19 A. Denied.

20 Q. And what request, if any, did you make of Panola County?

21 A. In Panola, I asked to see the report of Republican voters
22 in the primary, an electronic version, sort of like the poll
23 book, if you will, without the signatures, but just the voting
24 record. And that was provided via e-mail.

25 Q. Okay. And it was provided digitally to you?

1 A. Yes, sir.

2 Q. Was anything redacted?

3 A. No.

4 Q. Okay. Birth dates. You had birth dates in there?

5 A. I believe so.

6 Q. Okay. Very good. Does True the Vote create a bad counties
7 report?

8 A. Yes.

9 Q. What is a bad counties report?

10 A. A bad counties report is -- the last one we did was in
11 2012, where we took 2012 voter registration records at the
12 state level and compared it to census data and determined which
13 counties had in excess of 100 percent of their eligible
14 populations registered to vote.

15 THE COURT: And when was the census that you compared
16 it to?

17 A. The 2010.

18 THE COURT: 2010. And when did you do the comparison?

19 A. 2010 --

20 THE COURT: What election?

21 A. 2010 to the 2012 registration records.

22 THE COURT: Okay. So there was two years'
23 difference --

24 A. Yes.

25 THE COURT: -- in the --

1 A. In the --

2 THE COURT: Two years had transpired. So you're
3 looking at 2012 voter records -- registration records.

4 A. Right. Yes.

5 THE COURT: When you went, what did you exactly ask
6 for at Hinds County?

7 A. In Hinds County, I asked to see the absentee ballot
8 applications and envelopes.

9 THE COURT: Only absentee?

10 A. Yes, ma'am.

11 THE COURT: And why did you ask for absentee
12 applications and envelopes? What are those? Applications I
13 think I understand, but you can explain if you would.

14 A. Well, the absentee ballot applications and envelopes and
15 the inspection of those documents is a really important part of
16 understanding whether or not ineligible votes were counted.
17 And to get to that point, by looking at the absentee ballot
18 application, a voter is given an opportunity to state why they
19 should be eligible for an absentee ballot application. And
20 there's quite a process that you have to go through.

21 And Mississippi's laws on absentee voting are very clear.
22 In some states you don't have to have an excuse at all. In
23 Mississippi you do. And there's a number of procedures. You
24 have to have a notary signature. All these things have to be
25 accurately filled out. And then the envelope, the signatures

1 have to match from the application to the envelope.

2 THE COURT: And what is the envelope you're referring
3 to?

4 A. The envelope -- sorry. The envelope is quite literally the
5 envelope that is used to mail back the absentee ballot
6 application. And here in Mississippi there have been, in years
7 past, problems with absentee ballot applications and envelopes
8 and, in fact, convictions of individuals who were using those
9 instruments inappropriately.

10 THE COURT: I see. Okay. So did you ask for the same
11 thing in Rankin County?

12 A. Yes.

13 THE COURT: Absentee applications and envelopes?

14 A. (Nods head affirmatively).

15 THE COURT: And Panola?

16 A. In Panola I asked for the -- the file that would show the
17 Republican voters in the primary election.

18 THE COURT: Now, why would you have the right to that?
19 Under this same statute --

20 A. Yes, ma'am.

21 THE COURT: -- that's a voter record, not an
22 eligibility record.

23 A. That's correct, but --

24 THE COURT: I'm just not clear on why --

25 A. It is -- it is a part of what should be considered public

1 record.

2 THE COURT: Well, that's your view and you're entitled
3 to it. But I'm trying to measure the issues against --

4 A. Sure.

5 THE COURT: -- a statute. And the statute focuses on
6 voter eligibility and whether or not they're eligible to
7 vote -- whether an individual is eligible. Help me out with
8 how you get to the actual voting piece.

9 A. The -- and I'm not sure if I'm going to answer this
10 correctly or explain it correctly, but the reason that we were
11 interested in that particular file, that particular report, was
12 to determine and to -- you know, as -- as Mr. Nixon said
13 earlier, either to debunk or prove up whether or not there were
14 actually illegal double votes happening, which in this instance
15 would mean that someone who had voted as a Democrat in the
16 primary and then was going to vote as a Republican in the
17 runoff or vice versa, those would have been considered illegal.

18 So what we were trying to do prior to the runoff was
19 establish a base of data that we would be able to then -- once
20 the runoff numbers came in, we would be able to compare and see
21 quickly whether or not there was any fact to -- to the -- you
22 know, the allegations that were already floating out there.

23 THE COURT: Okay. And did you make that request to
24 Panola County with regard to -- or under the National Voter
25 Registration Act or did you make that request under some other

1 authorization? Panola.

2 A. In Panola, when I -- when I asked for that, admittedly, I
3 didn't specify under the National Voter Registration Act and
4 that's --

5 THE COURT: That's fine, but I'm asking, in your
6 mind --

7 A. In my mind -- yes, ma'am. In my mind and in my experience,
8 that shouldn't have been any problem. And, frankly, I had -- I
9 could not have imagined that what -- where we are now would
10 have -- would have gotten to this point. I just -- I really
11 believed that all this would sort of work itself out because,
12 in my view, this is all public information.

13 THE COURT: I see. Okay. Thank you.

14 BY MR. NIXON:

15 Q. Are you able to get all this information or similar
16 information from the other states in which you are active?

17 A. Yes, sir.

18 Q. Okay. Are you familiar with the term "suspense list"?

19 A. Yes.

20 Q. What is a suspense list?

21 A. Well, God love the Tenth Amendment. We all run our states
22 a little bit differently as it relates to elections. But in
23 most states the suspense list refers to voters who are still on
24 the rolls but are required to show proof of address or some
25 other kind of identification to reprove their -- the accuracy

1 of their registration upon voting, if that's --

2 Q. Right. And so if you show back up to vote, in different
3 states you're asked to provide different information in order
4 to get off the suspense list and back onto the permanent voter
5 rolls.

6 A. Right. Yes.

7 Q. So in answer to the court's question, why was the voting
8 book important? Is it important because it will show which
9 voters were moved off of the suspense list and back onto the
10 permanent rolls?

11 MR. WALLACE: Object, your Honor. I think that --

12 THE COURT: Sustained.

13 MR. NIXON: All right.

14 BY MR. NIXON:

15 Q. What will the voter roll book show you as it relates to the
16 suspense list?

17 A. The voter -- the polling book?

18 MR. TEEUWISSEN: Objection, your Honor. True the
19 Vote --

20 THE COURT: You're using -- okay. Thank you. You're
21 using different terms that are confusing.

22 MR. NIXON: Yes. I'm sorry. I apologize.

23 THE COURT: And you also were leading. I think you
24 figured that one out.

25 MR. NIXON: I admittedly was leading.

1 THE COURT: Okay. No problem. But we're back to the
2 this definitional question I started with. I need help here.

3 MR. NIXON: Okay. Yes. We had -- Ms. Engelbrecht is
4 not a lawyer. We do have the Assistant Secretary Of State who
5 I think will be able to clarify a lot more of the definitions
6 specifically, but -- as it relates to -- because every state
7 uses different terms. And so --

8 THE COURT: That's my concern.

9 MR. NIXON: Yes. So as it relates to Mississippi, I
10 think we can get -- have the Assistant Secretary of State maybe
11 clear up some of those other issues.

12 THE COURT: If I don't get that definition soon, the
13 record is going to be a mess.

14 MR. NIXON: Right. I agree.

15 THE COURT: So we have two choices.

16 MR. NIXON: I'll ask her.

17 BY MR. NIXON:

18 Q. What is -- maybe this helps.

19 THE COURT: I mean, you can ask her what she actually
20 asked for, and then it will sort itself out. But pick --
21 but --

22 BY MR. NIXON:

23 Q. I've been confusing the terms, and I did all day yesterday
24 as we were talking. But what is a voter roll, in your
25 understanding?

1 A. A voter roll, also called a voter registry, shows,
2 typically, the registration information of an individual voter.
3 And those are all sort of compiled into a mass document at the
4 state level that shows who's registered in the state.

5 THE COURT: Who is what?

6 A. Who is registered to vote in the state.

7 BY MR. NIXON:

8 Q. So voter roll is everybody?

9 A. Right. And then it's broken down as is appropriate for
10 their local elections.

11 Q. What is a poll book?

12 A. A poll book typically is a book that is used during the
13 election that is the -- is the collection point for
14 information. When a voter comes in to cast their vote, the
15 poll book has been auto-filled or prefilled according to voter
16 file information, voter roll information. And, typically, the
17 voter is asked to sign their name by their information just
18 verifying that they are the person that voted.

19 MR. PIZZETTA: Objection, your Honor. For clarity
20 sake, I'm not sure what the witness is saying when she says
21 "typically." Is she talking about her experiences in other
22 states than Mississippi? Because what she just described is
23 not Mississippi.

24 THE COURT: Okay. That's absolutely fine
25 cross-examination. I'll just -- let's just do it that way.

1 BY MR. NIXON:

2 Q. So the -- the poll book is a subset of the voter rolls. Is
3 that is a fair way to say that?

4 MR. PIZZETTA: Objection. Calls for speculation
5 unless she knows --

6 THE COURT: Sustained. And the hesitation of the
7 witness indicates she doesn't understand. Here's my question
8 of you. And even though I'm wearing a robe and I'm sitting up
9 here and not out there, I want you to either agree or disagree
10 with me. Okay. This is your testimony, and you're the one
11 under oath. And I'm not trying to trap you. I am honestly
12 asking a question to try to simplify. If I am wrong, please
13 tell me. I don't live in Mississippi. Okay?

14 Is the polling book the collection of pages that has
15 the list of voters in a precinct, or whatever they call it in
16 Mississippi, of people that the county believes are eligible to
17 vote on the voting day or days?

18 A. That is my -- that is my understanding. But my -- my
19 challenge is that that's one of the documents we asked to look
20 at and have not been allowed to look at them.

21 THE COURT: So you have not even seen a sample?

22 A. I've seen like sort of pictures in the paper.

23 THE COURT: Okay. Based on that, is it the list of
24 voters at a polling place and -- in your way of understanding?
25 That's all I can ask is your understanding. Yes or no?

1 A. My understanding is yes, and their signature, which becomes
2 important.

3 THE COURT: Well, and the signature is added before
4 the vote or before the book -- I'm sorry -- before the day of
5 the election, or is the signature you're referring to added
6 when someone comes to the voting place?

7 A. When someone comes to the voting place.

8 THE COURT: And casts --

9 A. And casts their vote. Then that signature becomes of
10 interest to an organization like ours because it becomes a
11 piece of the puzzle.

12 THE COURT: Okay. I understand your organization
13 cares about voter fraud.

14 A. Right.

15 THE COURT: You don't want people voting twice and the
16 like.

17 A. Yeah, among other things. We just want the process to be
18 fair. Right.

19 THE COURT: Okay. But for the purposes today, the
20 statute that we're focused on is called the National Voter
21 Registration Act.

22 A. Yes.

23 THE COURT: And it is involved in making sure
24 eligibility lists are accurate and current. That's what the
25 statute says, basically.

1 A. Right.

2 THE COURT: And you're entitled to see documents that
3 implement that principle. How does a voting -- a poll book, in
4 your way of thinking, fit into the validity of the eligibility
5 lists?

6 A. One example might be if someone had already voted absentee
7 or if they indicated that they were an absentee voter. You
8 know, whether or not they were included or what that poll book
9 showed on election day, that would have been a -- it would have
10 been a descriptor, I guess, or an indicator to the election
11 worker that the voter that might present themselves would have
12 already voted. That's something that the poll book typically
13 reflects. Does that -- am I?

14 So the eligibility to vote on that day would have been
15 mitigated because they had already voted absentee. And that's
16 something that the poll book would show.

17 THE COURT: The poll book, in your mind, or at least
18 in other places, would show that someone had already voted?

19 A. Yes.

20 THE COURT: So it would have been signed or marked?

21 A. There would be some notation, typically along the line of
22 the voter's contact information, that would indicate that they
23 already voted.

24 THE COURT: I see. Okay. I'm stopping my line not to
25 indicate that I agree that the polling book --

1 MR. NIXON: We understand.

2 THE COURT: -- is part of the --

3 MR. NIXON: Right.

4 THE COURT: -- part of the documents that would be
5 within your claim under the National Voter Registration Act.
6 I'm just stopping because I think we're at the end of her
7 explanation.

8 MR. NIXON: Thank you.

9 BY MR. NIXON:

10 Q. Let me take you back to the incident reports. In part of
11 your training, do you hand incident reports to your volunteers?

12 A. Yes.

13 Q. Do you ask them to fill those out at the time that they
14 have contact with someone from whom they have requested
15 records?

16 A. Well, if I -- if I might, the incident reports were only --
17 we had -- we had no expectation that the number of those that
18 we ultimately received would have been used because they were
19 only to be used in the instance of denial of records -- I mean,
20 denial of public records.

21 The primary tool that we trained on was to be used for
22 their collection of data. So to answer your question, yes,
23 that is what the incident report was. But that was really a
24 secondary purpose, a secondary tool, because we had no
25 expectation that we wouldn't be able to get the documents.

1 Q. How many volunteers of True the Vote came to Mississippi?

2 A. Roughly, 20 some.

3 Q. And on what days did you send them out?

4 A. Oh, my word. I have to get my dates straight.

5 THE COURT: Would the July 7th and 8th refresh your
6 recollection?

7 A. Yes. I mean, those were two of the days that we were here.

8 BY MR. NIXON:

9 Q. And did the volunteers fill out the reports at or near the
10 time of their contact with the county officials?

11 A. Yes.

12 Q. Did they send --

13 THE COURT: Okay. Can you show her several of them
14 and -- because they look like a lot of them are in the same
15 handwriting. Can you cover that?

16 MR. NIXON: Yes.

17 BY MR. NIXON:

18 Q. How many --

19 THE COURT: Please.

20 BY MR. NIXON:

21 Q. How many teams did you send out? Teams.

22 A. Roughly ten teams, roughly.

23 Q. Okay. And were they instructed to go to multiple counties?

24 A. Yes.

25 Q. Okay. So you might have the same person fill out the

1 report three or four times, depending on how many counties they
2 went to?

3 A. Yes. And they went very quickly because they -- we weren't
4 getting documents. So...

5 Q. Okay. So we have all of the incident reports here, and let
6 me hand these to you.

7 MR. NIXON: By way of explanation, your Honor, with
8 the bill of particulars, as we understood, we provided all the
9 incident reports as related to the counties that were sued.
10 But we have all of the incident reports here for everybody to
11 inspect. And I think we've even offered them to the Secretary
12 of State earlier today if he wanted --

13 THE COURT: Copies?

14 MR. NIXON: Well, we didn't have copies. We just
15 said, *Here. You want to look at them?* We didn't make copies.
16 We didn't know how much -- we knew we had an hour. We didn't
17 know how much we were going to get to do.

18 BY MR. NIXON:

19 Q. Ms. Engelbrecht, pull out an incident report.

20 (COMPLIED WITH REQUEST)

21 Q. What county is it for?

22 A. This is for Attala County.

23 Q. And what date was that done?

24 A. On the 9th.

25 Q. And who did it?

1 MR. PIZZETTA: Your Honor, I don't think the defense
2 has a copy of that report.

3 THE COURT: Yeah.

4 MR. NIXON: No, you --

5 THE COURT: Go into your bill of particulars, please,
6 and pick one.

7 MR. PIZZETTA: Your Honor, it may be more appropriate
8 if he goes into the list of the few ones that are attached as
9 possible exhibits today as opposed to the bill of particulars,
10 which --

11 THE COURT: That would be fine. That would be fine
12 too. I don't care.

13 MR. SANDERS: Your Honor, we would also object to the
14 testimony about Attala County.

15 THE COURT: I can't hear you.

16 MR. SANDERS: We would also object to testimony about
17 Attala County, a visit to Attala County.

18 THE COURT: Yes. I understand. I agree with that.
19 That's why I'm not receiving that. With due respect to the
20 State, frankly, you're on notice in this bill of particulars
21 business. And I'm not persuaded -- I'm not persuaded that that
22 stuff is not potentially exhibits here.

23 MR. PIZZETTA: I understand, your Honor, just --

24 THE COURT: I understand they introduced other
25 documents as exhibits, in quotes; but the incident reports,

1 we've all seen them. They're in the bill of particulars. And
2 so --

3 MR. PIZZETTA: We've not seen all of them, your Honor,
4 but I think you're right. The bill of particulars --

5 THE COURT: I didn't -- I didn't say we'd seen all of
6 them. I said we all have seen the ones in the bill of
7 particulars. That's all I'm saying.

8 You're right. None of us have seen the rest of them.
9 You're very right on that. So do you want to take her through
10 one of them that we have seen, Mr. Nixon, please?

11 MR. NIXON: Sure. And the benefit of this one is --
12 BY MR. NIXON:

13 Q. Let me show you what's been marked as Exhibit 4 as part of
14 the bill of particulars. And, Ms. Engelbrecht, if you can just
15 look at the computer screen in front of you, that would be
16 probably there. Is it not that clear?

17 A. No.

18 (PAUSE)

19 THE COURT: The electronics expert is going to help
20 you. There's an auto focus. And, frankly, if you adjust the
21 lights on the left and right, it will make it brighter.

22 (EXAMINED DOCUMENT)

23 THE COURT: Great.

24 MR. NIXON: Thank you.

25 THE COURT: Thank you, sir.

1 BY MR. NIXON:

2 Q. Okay. Ms. Engelbrecht, if you could, turn your -- do you
3 have it there in front of you now?

4 A. Uh-huh (indicating yes).

5 Q. Okay. Is this a form provided by True the Vote?

6 A. Yes.

7 Q. Okay. Do you see where it's signed by Ellen Swensen?

8 THE COURT: For the record, this is Exhibit 4.
9 Correct?

10 MR. NIXON: Yes, it is.

11 THE COURT: Plaintiffs' 4?

12 MR. NIXON: Yes.

13 BY MR. NIXON:

14 Q. Do you see where it Plaintiffs' 4?

15 A. Yes.

16 Q. Down at the bottom. And it's filled out by Ellen Swensen?

17 A. Uh-huh (indicating yes).

18 Q. Is she one of the volunteers of True the Vote?

19 A. Yes.

20 MR. NIXON: And for the court's benefit, Ms. Swensen
21 is here today.

22 BY MR. NIXON:

23 Q. Did True the Vote receive this incident report? And it
24 looks like it's page two, page three of five, and signed by
25 looks like Ellen Swensen and Susan Morse at the bottom.

1 A. Yes.

2 Q. Is this the type of report that you asked your volunteers
3 to fill out?

4 A. Yes.

5 Q. Just to describe what happened.

6 A. Right.

7 Q. And then do they return the report back to you?

8 A. Yes.

9 Q. And do you keep the report in the course and scope of your
10 business?

11 A. Yes.

12 Q. And is it in the function of True the Vote and your
13 function as president of True the Vote to keep incident
14 reports?

15 A. Yes.

16 Q. And why do you do that?

17 A. Well, because it becomes sort of part of the archive of
18 what happened, and it gives us a clear indication of what did
19 or didn't occur and then -- that's it.

20 Q. Is this a true and correct copy of the original incident
21 report filled out by Ms. Morse?

22 A. It appears to be.

23 Q. And was it filled out at the time of their visit to the
24 specific county? I believe --

25 A. Yes.

1 Q. -- Jones County. Was it -- okay. Very good. Do you have
2 incident reports for all of the teams that went out?

3 A. Yes.

4 Q. Is that the folder that's in front of you today?

5 A. Yes, although I thought there were more, but yeah.

6 Q. Now, you did not sue all of the counties for whom you had
7 contact?

8 A. No.

9 Q. Why not?

10 A. Well, there -- there were so many incident reports that
11 came back, and it just became a function of time and
12 consideration of, you know -- frankly, of whose -- whose
13 experiences most clearly showed what we were experiencing
14 statewide and --

15 Q. Did some of the counties cooperate and provide you with --

16 A. Yes. Yes.

17 Q. With regard to the voter poll book and the voter rolls,
18 both of those two items that we've been talking about, is that
19 information available now electronically?

20 A. The voter rolls are available electronically, but poll
21 books are not.

22 Q. Okay.

23 A. To the best of my knowledge.

24 Q. Is the information from the poll book recorded now on the
25 voter rolls, so if we were to get a voter roll from Mississippi

1 today, would it have the information as to who voted in the
2 primary on the voter rolls?

3 MR. PIZZETTA: Objection. Lack of foundation. Calls
4 for speculation.

5 THE COURT: Sustained. It sounds like she doesn't
6 know.

7 MR. NIXON: Okay. We'll get that from the Secretary
8 of State.

9 BY MR. NIXON:

10 Q. Are you asking for the -- also for access to the military
11 and oversea vote applications?

12 A. Yes, the UNOCAVA. Yes, sir.

13 THE COURT REPORTER: I'm sorry. The what?

14 A. Yes, UNOCAVA. It's U-N-O-C-A-V-A. It's just a turn of
15 phrase, I guess, for military ballot applications.

16 THE COURT: That's the name of the statute, isn't it?

17 A. Yes.

18 THE COURT: Solid caps, for the record.

19 MR. NIXON: One last thing before I pass the witness
20 and we get on to some of the -- because I think some of the
21 other witnesses will be able to fill in the gaps.

22 BY MR. NIXON:

23 Q. You talked about that bad incident -- bad counties reports.

24 THE COURT: Bad -- bad --

25 MR. NIXON: Counties. Bad counties.

1 BY MR. NIXON:

2 Q. -- where you have more registered voters than you have
3 eligible population. Nationally, what is about the average of
4 registered voters to the eligible population?

5 A. On average, about 72 percent.

6 Q. How many counties in Mississippi have more registered
7 voters, when you last ran your numbers, than they did
8 eligible -- citizens eligible to vote?

9 A. 15 counties.

10 Q. 15 counties. Out of 82?

11 A. Yes, sir.

12 Q. Okay.

13 MR. NIXON: I will pass the witness.

14 THE COURT: Cross.

15 MR. PIZZETTA: Your Honor, do you want us to be heard
16 on the evidentiary issue about this document? It wasn't -- he
17 didn't move it into evidence. I imagine he wants to move it at
18 some point in time. How do you want to handle --

19 THE COURT: I'm going to wait on the evidence -- the
20 final evidentiary rulings until I've heard the evidence from
21 all of the witnesses. We have a chicken-and-an-egg problem.
22 I'm just figuring he's going to try to tie it up with the next
23 -- with the witness who wrote the document. If he does not do
24 it at the end of the hearing, yes, you will be heard.

25 MR. PIZZETTA: Thank you, your Honor.

1 THE COURT: You can be heard anyway.

2 **CROSS-EXAMINATION**

3 BY MR. PIZZETTA:

4 Q. Again, I'm Harold Pizzetta with the Secretary of State's
5 office. Ma'am, when was it that you said you went to Hinds
6 County?

7 A. It was the Thursday or Friday before the runoff, and I'm --
8 that date -- I don't know the exact date.

9 Q. Okay. I'm interested --

10 A. Or maybe that Monday. I'm so sorry. It really was a blur,
11 but prior to the runoff.

12 Q. It could have been the day before the actual runoff
13 election?

14 A. It was either the week -- the latter part of the week prior
15 or possibly that Monday.

16 Q. About that same time that you say you went to Rankin and
17 Panola?

18 A. Uh-huh (indicating yes). Well, we went to Panola first. I
19 went to Panola first.

20 Q. All would have been -- maybe I'll put it this way -- within
21 two to three business days of the June 24th election?

22 A. Yes.

23 Q. Do you remember?

24 A. Yes.

25 Q. All right. And I'm interested because the judge directed

1 plaintiffs to give us a list, a bill of particulars, by a
2 certain day that described every contact and every request for
3 documents. Were you aware of that requirement?

4 A. I knew there had been -- there were documents being
5 prepared for this purpose.

6 Q. Did they show you the bill of particulars before they filed
7 it?

8 MR. NIXON: Objection. Calls for -- excuse me. Calls
9 for attorney-client privileged conversation.

10 MR. PIZZETTA: I'm not asking what they asked about
11 it. I'm asking if maybe she verified it for accuracy.

12 THE COURT: Well, I'm going to take the answer as a no
13 if you don't let her answer.

14 MR. NIXON: Okay. Go ahead.

15 BY MR. PIZZETTA:

16 Q. Ma'am, why is it that these three contacts, the three
17 contacts you -- the only three contacts --

18 THE COURT: Do you want to know the answer to the
19 question? I've overruled his objection.

20 MR. PIZZETTA: Oh, I'm sorry, your Honor. I thought
21 you sustained. Please --

22 THE COURT: I was going to supply him with an answer,
23 and he sat down instead. So he -- I think you may ask the
24 question again if you want the answer.

25 MR. PIZZETTA: Thank you, your Honor.

1 BY MR. PIZZETTA:

2 Q. Were you shown the bill of particulars before it was filed
3 to verify its accuracy?

4 THE COURT: Can you wave the bill of particulars?
5 It's this (indicating). Mr. Nixon, would this have been what
6 was -- was it bound with the tabs, or no? I'll let you make a
7 representation. She doesn't seem to be familiar with this
8 document.

9 MR. NIXON: We --

10 THE COURT: The series of documents, I should say.
11 A. Well, I mean, things were certainly sent via e-mail, and we
12 reviewed a great many things. This is -- this is all a
13 brand-new world to me. So I just don't want to -- I don't want
14 to make a mistake or not answer something that I'm being asked
15 inadvertently.

16 THE COURT: The lawyers submitted to the court a bunch
17 of incident reports and some other things, and that's what the
18 lawyer is asking you. Did you review this document before
19 you -- in connection with your testifying or preparing in this
20 lawsuit?

21 (WITNESS EXAMINED DOCUMENT)

22 THE COURT: And when I say "document," I mean this
23 series of documents, this booklet or packet.

24 A. All of these, yes, I've certainly seen the --

25 (WITNESS EXAMINED DOCUMENT)

1 A. Yes.

2 Q. All right. That's okay. That's my copy.

3 A. Sure. Oh, sorry. Yes.

4 Q. All right.

5 A. It's just a lot of documents.

6 Q. What I'm curious about, ma'am, is that it's -- the only
7 three contacts that your lawyer asked you about are actually
8 not listed in this bill of particulars as having ever occurred.
9 I'm curious. When you looked through it, did you notice that
10 your three contacts were not listed on there?

11 A. Not as it related to documents, because I didn't come away
12 with any documents that would have been submitted.

13 Q. Not just any documents on the bill of particulars. It's
14 any contact was listed in there from True the Vote.

15 A. Okay.

16 THE COURT: Listen to me. I don't care.

17 MR. PIZZETTA: Okay.

18 THE COURT: All right. Honestly, you can make
19 whatever argument you want. It's clear they're not in there,
20 but that's the lawyer argument.

21 BY MR. PIZZETTA:

22 Q. Did you fill out an incident report related to those
23 contacts?

24 A. No.

25 Q. All right. But you train your volunteers, you said, to

1 fill out incidents with any such contacts.

2 A. At the time that we actually had volunteers come from
3 across the country to do a statewide review, yes. For the
4 three visits that I thought would have been no big deal, I did
5 not fill out my own incident reports, no.

6 Q. Did you get a copy of the business cards from any of those
7 individuals you spoke to at those three counties?

8 A. No.

9 Q. Hinds County you did not ask for a voter roll. Correct?

10 A. No. I -- I have the state's -- or True the Vote has the
11 state's voter rolls. So there was no need to ask for that.

12 Q. True the Vote -- I'm sorry. Say that again.

13 A. True the Vote has the state voter file. And, again --

14 And, Judge, you and I are in somewhat similar situations.
15 In every state there are oftentimes different terms used. So
16 it's voter roll, voter file, it's -- and I'm just -- I'm being
17 hesitant because I want to make sure I'm answering the question
18 correctly.

19 Q. Let me be more specific, then. You already have a list of
20 Mississippi -- of all of the eligible --

21 A. We have -- not in Mississippi, but in most -- most all the
22 country, we have 770 million, yes.

23 Q. And that list contains the name and address of all those
24 registered voters?

25 A. Yes.

1 Q. Does it contain date of birth of those registered voters?

2 A. In some cases, yes.

3 Q. I'm sorry. Be specific. In Mississippi's list of eligible
4 voters you have, does it have date of birth in there?

5 A. I don't believe so.

6 THE COURT: What? I couldn't hear the answer.

7 A. I'm so sorry. I don't -- I don't believe it does.

8 BY MR. PIZZETTA:

9 Q. Does have it the voter registration ID number that is
10 associated with each of the registered voters?

11 A. Yes. I believe it does.

12 Q. All right. When you went to Rankin County -- I'm sorry.
13 In Hinds County and Rankin County, you didn't ask for poll
14 books either. Correct?

15 A. No, sir.

16 Q. What was it that you said you asked for in Panola? Was it
17 a -- it wasn't a poll book?

18 A. It was the report that showed the Republican voters --
19 Republican voter turnout in the primary election.

20 Q. Did that list have birth dates on it for voters or no?

21 A. I really don't remember. I answered earlier that I thought
22 it did, but I really don't remember.

23 Q. You stated a moment ago that you thought poll books in
24 Mississippi contained a voter signature. Have you seen any
25 poll books produced by any county, redacted or otherwise, in

1 Mississippi?

2 A. No.

3 Q. You have gotten, though, some redacted poll books from
4 Mississippi, haven't you?

5 A. It is possible that some of our volunteers did receive that
6 information, and -- but I -- I have not looked at it myself,
7 no.

8 Q. Would it surprise you to learn that a poll book is not a
9 list of all registered voters for a precinct?

10 A. Not -- not particularly, no, because the definitions state
11 by state are so nuanced.

12 Q. You'd agree with me there is a difference between a poll
13 book and a voter roll. Correct? They're not the same thing.

14 A. I would agree that in this state, apparently, those
15 definitions are different, yes.

16 Q. Are you aware of the fact that people who -- a voter who
17 shows up on election day and is not listed on the poll book is
18 still eligible to vote?

19 A. In most states that's -- that's accurate, yes.

20 Q. Are you aware of that being the case in Mississippi?

21 A. That -- that would -- yes. I mean, that would be my -- my
22 expectation.

23 Q. Let me see if we can add a definition to what we've been
24 talking about, crossover voting. And I want to separate it and
25 make sure we're on the same page. We're not talking about a

1 voter who is improperly registered. But I want to make sure
2 that you and I are talking about the right thing for crossover
3 voter.

4 Do you understand the phrase, let's say, "improper
5 crossover voter" to be a registered voter who votes, for
6 instance, in the Democratic primary on June 3rd and then votes
7 in the Republican runoff on June 24th? Is that an example of
8 an improper crossover vote, in your opinion?

9 A. In my opinion and my understanding of Mississippi law,
10 that's -- that's illegal, yes.

11 Q. And I want to draw a distinction here. That has nothing to
12 do with the voter being registered -- properly registered.
13 Right? If they're not properly registered, they shouldn't be
14 voting in any primary. Right?

15 A. Correct.

16 Q. So True the Vote, one of their focuses in the complaint is,
17 *We want to know whether a registered voter voted in the*
18 *Democratic primary on June 3rd and the Republican runoff on*
19 *June 24th.* Right?

20 A. Yes.

21 Q. Am I right that is a matter -- it's not a federal matter.
22 It's a matter of state law as to who can participate in those
23 primaries. Correct?

24 MR. NIXON: She's not --

25 THE COURT: Sustained.

1 MR. NIXON: -- not a lawyer.

2 THE COURT: Sustained.

3 MR. PIZZETTA: All right.

4 BY MR. PIZZETTA:

5 Q. You've received unredacted poll books from some counties
6 already? A moment ago you said you thought you had.

7 A. Here again, I think we have.

8 Q. Well --

9 A. We -- if I may, we anticipated that our -- our teams -- we
10 have a very -- very few people, and we anticipated that we
11 would work in very few counties and become very familiar with
12 the process. That was not, however, our experience because we
13 were not given access to documents. And so it -- it became
14 very difficult to keep track of the bits and pieces that
15 were -- because there was such variation county to county.

16 Q. Let me be specific. For those poll books that you have
17 received already from counties, you have received some that
18 included birth dates. Correct?

19 THE COURT: Included birth dates?

20 MR. PIZZETTA: Birth dates.

21 BY MR. PIZZETTA:

22 Q. Correct?

23 A. I -- I -- I don't know.

24 Q. Well --

25 THE COURT: If she doesn't know, move on. Time.

1 Maybe there will be somebody else who does. And if not, you
2 can call a witness.

3 MR. PIZZETTA: I mean, she verified in the TRO -- that
4 was one of the facts in the TRO, your Honor, but --

5 THE COURT: I know.

6 BY MR. PIZZETTA:

7 Q. All right. So as you sit here today then, you have -- you
8 personally -- and you're not -- I mean, are you aware of anyone
9 at True the Vote that has analyzed the unredacted poll books
10 that you've already received?

11 A. That has analyzed them?

12 Q. Yes.

13 A. I mean, that has done more than view them? No. And if I
14 may, if it was in our -- if it was in our TRO, then that's
15 something that we absolutely would have had and would have
16 looked at. And I apologize. There have been so many documents
17 in various forms, some with birth dates, some with none, some
18 that were whited out, some that were partially whited out.
19 It's been all over the board.

20 Q. That's what I guess I want to get to. According to the
21 TRO, you've received unredacted poll books with date of birth,
22 and you've told the court it's important that you receive the
23 rest of these ASAP, but yet sitting here today, you don't know
24 whether you all have analyzed any of the data that you have
25 gotten to establish whether there's any crossover voting.

1 A. I think what we saw was such an inconsistency across the
2 state, that a true analysis would have been -- would have been
3 incapable of really showing anything.

4 Q. You've received -- also received redacted poll books, poll
5 books with date of birth redacted, from counties already,
6 haven't you?

7 A. I believe so. Yes.

8 Q. All right. So when you looked at those -- have you looked
9 at those poll books to determine whether there are any
10 crossover voting yet?

11 A. I believe that our volunteers in certain counties did have
12 an opportunity to find -- or did -- did find crossover votes.

13 THE COURT: Okay. That's not the question. The
14 question was did you.

15 A. I did not personally. No, I have not laid eyes on it
16 myself personally.

17 BY MR. PIZZETTA:

18 Q. Is it fair to say that your volunteers have been able to
19 come up with allegedly improper crossover voting by looking at
20 redacted poll books without date of birth?

21 A. They could come to a point where they would see the same
22 name. However, it would be, in our opinion, inconclusive
23 unless we would have a date of birth to key off of.

24 THE COURT: Is there a reason why -- I think this is
25 where he's going. Is there any reason why you can't just

1 identify the universe of crossover voters, which has to be a
2 heck of a lot smaller than the universe of all voters --

3 A. Right.

4 THE COURT: -- who showed up to vote on the runoff
5 day, identify the universe of crossover voters and then ask for
6 those birth dates? I mean, wouldn't that be a heck of a lot
7 easier and cheaper for your purposes?

8 A. I mean, that would -- that would be -- if we had access to
9 all the data, that would be one of the ways that we would go
10 about it, but when --

11 THE COURT: I think what he's driving at is why --

12 A. Sure.

13 THE COURT: -- do you need to get birth dates of every
14 voter or every eligible voter? When I say "eligible," I mean
15 people on the voter rolls. Isn't there really something more
16 going on here that you want to get all that personal
17 information about all these voters? That's what he's driving
18 at.

19 A. Well, the date of birth in the example that you're giving
20 about crossover voting would be -- would be one application.
21 And, Judge, I would agree with you that would be the systematic
22 approach we would take is to try and as quickly as we could
23 with electronic -- you know, electronically provided files, you
24 know, ferret out who seemed to have voted twice or voted in a
25 crossover condition in this case and then look at the birth

1 dates to try to add a layer of validity. However, that's just
2 one application of where date of birth becomes important. Date
3 of birth can be used to -- and is used as a primary peg for
4 many things.

5 THE COURT: Well, I'll let you answer that when
6 someone else asks, but thank you. I don't want to steal the
7 thunder from the lawyers.

8 MR. PIZZETTA: Your Honor, your thunder was much
9 better than mine. Thank you.

10 THE COURT: I know, but I am trying to move this
11 along.

12 MR. PIZZETTA: Thank you, your Honor.

13 BY MR. PIZZETTA:

14 Q. Is there any restrict- -- if you were given access --

15 MR. PIZZETTA: Let me represent to the court first,
16 there are -- there are about 1.8 million voters who appear on
17 poll books.

18 BY MR. PIZZETTA:

19 Q. And is your position being you think you're entitled to
20 look at the date of birth of all 1.8 million voters if you so
21 requested?

22 A. I think that's what the NVRA requires federally; and,
23 certainly, in the instance of many states, that's the case.

24 Q. Am I right there's no restriction on what you could do with
25 that information once you have it? Right? You could sell it.

1 You could post it on the Internet. You could do anything you
2 want with it, couldn't you?

3 A. No. You're restricted with what the allowance of voter --
4 the utility of the voter rolls is.

5 Q. What restriction --

6 THE COURT: I'm sorry. I'd like to know what those
7 restrictions are.

8 MR. PIZZETTA: Your Honor, that's exactly what I was
9 going to ask.

10 BY MR. PIZZETTA:

11 Q. What are -- where are you getting this from?

12 A. Well, it's -- it's my understanding that when you make the
13 request of the state for those files, it's -- you indicate that
14 you're not going to use that for commercial purposes. That is
15 a primary limitation. So, basically, you're not going to use
16 it to solicit, you know.

17 THE COURT: I missed a word. You're not going to use
18 it for what?

19 A. For commercial purposes. That you wouldn't use it to, you
20 know, try to take all the mailing addresses and send a -- you
21 know, a mailer to everybody's home advertising for a product or
22 something.

23 THE COURT: What about a candidate?

24 A. Well, candidates have access to the voter rolls, yes.

25 THE COURT: But not dates of birth.

1 A. Well, in many states they do have access to dates of birth.
2 THE COURT: I'm only worried about Mississippi.
3 A. Sure. Sure. And my understanding is, currently they
4 don't.
5 THE COURT: So would True the Vote use the dates of
6 birth and all this detailed personal information about voters
7 for purposes other than checking the validity of the votes in a
8 particular election?
9 A. We would check votes in a particular election. We also
10 look at the maintenance and accuracy of the voter registry, not
11 compared necessarily to an election but just in and of itself.
12 THE COURT: Okay. Fair enough. Other purposes that
13 you might use it for? Lending it to candidates that you liked?
14 A. No. No, no, no. I'm so sorry. No.
15 THE COURT: Well, what is the restriction that you're
16 aware of that prevents an organization like yours -- maybe you
17 would not, but an organization like yours from doing that?
18 That is, if it's some Democratic organization, they've gotten
19 all this detailed personal information, what's wrong with them
20 lending it to some Democratic -- not lending it, but providing
21 it for free to some Democratic campaign?
22 A. In the case of True the Vote, we are a 501(c)(3)
23 organization. We do not work directly with candidates. And as
24 a matter of organizational policy, we wouldn't do it because it
25 undermines the entire sort of efficacy of our projects, I would

1 say.

2 THE COURT: But do you have to be a 501(c)(3)
3 organization to get this information?

4 A. No.

5 THE COURT: In fact, individuals can get it. Correct?

6 A. It's publicly available, yes, ma'am.

7 THE COURT: So an individual that has no constraints
8 about tax deductibility or any of that could -- just an
9 individual could turn around and use the information any way
10 they wanted, other than commercial, other than selling it for
11 commercial products?

12 A. I am not certain of the exact stipulations that Mississippi
13 may put on its voter files. In many states there are, you
14 know, several things that you're not allowed to do. You're not
15 allowed to contact voters. You're not allowed to, again, use
16 things for commercial purposes. So --

17 THE COURT: Okay. So it's a matter of state law.

18 A. -- there are restrictions. Yes.

19 THE COURT: To your way of understanding.

20 A. Yeah. My understanding is that voter files are public
21 record according to the NVRA. But when you order them state to
22 state, that process is handled differently.

23 THE COURT: Okay. Well, you may proceed.

24 BY MR. PIZZETTA:

25 Q. I think the last question I have on that would be, as far

1 as you know, there's no legal restriction on an individual or a
2 group who gets those dates of birth from just posting them on
3 the Internet then?

4 A. I mean, as far as I know, no, but it's -- well, no.

5 Q. I'll switch gears, then, to I think the standing issue,
6 which was one of the questions the judge raised about True the
7 Vote's standing. Does True the Vote have members?

8 A. No.

9 Q. All right. It's not a membership organization?

10 A. No. No.

11 Q. Do any of the folks that went out to make requests on
12 behalf of True the Vote, do they pay dues to True the Vote?

13 A. No.

14 Q. Did you have relationships with any of those individuals
15 prior to them becoming involved in the Mississippi election?

16 A. That came and did the research on behalf of True the Vote?

17 Q. To do the request. Did you know them before they came
18 over?

19 A. Yes.

20 Q. How did you get in touch with them? Did you ask them to
21 come to Mississippi?

22 A. Well, we -- we said that we would be going, and anyone that
23 was already involved in research in their own states, if they
24 were interested in joining us, then we welcomed them to come.

25 Q. Did you contact them or they contacted you?

1 A. Both.

2 THE COURT: I couldn't hear the answer.

3 A. Both cases.

4 THE COURT: Both?

5 A. Yeah. Some contacted us; some we contacted.

6 BY MR. PIZZETTA:

7 Q. Did you tell them which counties to go to?

8 A. Yes.

9 Q. Did you tell them when to go to a particular county?

10 A. Well, on -- we would tell them, you know, on a day to try
11 to go to these counties. We just tried to cover as many
12 counties as we could.

13 Q. When you sent -- for example, on -- for Hinds County, there
14 were -- True the Vote volunteers -- there were several of them,
15 according to the bill of particulars, made five visits just to
16 Hinds County to ask for documents over two days. Did you tell
17 them to all go separately to Hinds County and ask for
18 documents?

19 A. Our teams were sent to work in a county and with each --
20 with each day -- in fact, some -- in some cases every passing
21 hour there was a new understanding of what the process was.
22 And so in some instances we did ask teams to go back to try to
23 clarify the request or try to -- because we were just hitting a
24 wall of -- seemingly, of just -- we couldn't understand where
25 the disconnect was.

1 Q. Did they ask for the same documents every time they showed
2 up?

3 A. No, not necessarily.

4 Q. Did they -- they didn't ask for the same documents even in
5 the same form when they showed up on different occasions.
6 Right? Sometimes they'd ask for it in PDF; sometimes they'd
7 ask for it in Excel. Right?

8 A. Well, we -- we would have instructed them to ask for it
9 electronically in whatever format they could get it. So I
10 wouldn't know why they would go back on separate days to ask
11 for separate file extensions, but...

12 Q. Did you instruct any of your volunteers to not identify
13 themselves as associated with True the Vote?

14 A. It was discussed that if -- you know, if they were asked to
15 fill out a form, that they should feel comfortable filling it
16 out as an individual. There certainly was not a problem with
17 representing that they were here, you know, with True the Vote.
18 But they're not tied with True the Vote in any other way.
19 So...

20 Q. Did you tell them to identify themselves as True the Vote
21 volunteers?

22 A. We just -- we didn't really tell them not to. We said be
23 an individual and...

24 Q. I'm curious as to why True the Vote sent out these letters
25 to the parties, the Democratic Party and the Republican Party,

1 those folks, saying, *We're coming and we might be asking for*
2 *some documents.* Why didn't True the Vote draft one letter that
3 could be delivered to the clerks that clearly set forth what
4 they were requesting, under what authority and when they would
5 like to have it?

6 A. Well, our feeling was that time was of the essence and that
7 it would be more productive to manage these things in person.

8 MR. PIZZETTA: Your Honor, I'm nearing the end.

9 BY MR. PIZZETTA:

10 Q. Would you agree with me that there's likely to be
11 Mississippi voters who would feel that disclosure of their date
12 of birth is an invasion of their privacy?

13 A. I would agree that people feel that about many things and
14 things still are publicly available.

15 Q. You'd agree they feel like that about date of birth too,
16 don't they?

17 MR. NIXON: Your Honor --

18 A. They might --

19 MR. NIXON: -- this calls --

20 A. -- feel that way --

21 MR. NIXON: -- for speculation.

22 A. -- about anything.

23 THE COURT: What's the objection?

24 MR. NIXON: It just calls for speculation as to what
25 this witness might think Mississippi voters would feel.

1 THE COURT: Sustained.

2 BY MR. PIZZETTA:

3 Q. Do you feel that your date of birth is a sensitive piece of
4 private information?

5 THE COURT: Your date of birth coupled with your name
6 and address --

7 MR. PIZZETTA: Thank you, your Honor.

8 THE COURT: -- or just date of birth in the abstract?

9 MR. PIZZETTA: Your Honor, very good.

10 BY MR. PIZZETTA:

11 Q. Your name, address and date of birth is a private and
12 sensitive bit of information.

13 A. I believe that it's so publicly available in so many forms
14 that it's --

15 THE COURT: What, your name, address and date of
16 birth?

17 A. Yes. I mean, it's on your driver's license. It's a
18 standard that's used to, I mean, verify a great many things.
19 It's not difficult to come by if somebody really wanted to do
20 something.

21 THE COURT: That wasn't the question. The question
22 was do you think -- what was the question?

23 A. Personally, no, I don't. Personally, no, I don't believe
24 that your date of birth -- now, I would cross the line at
25 Social Security, and we certainly haven't asked for that.

1 BY MR. PIZZETTA:

2 Q. Are you aware that the Federal Trade Commission, the
3 President's Task Force on Identity Theft, the Texas Attorney
4 General's web site and the Mississippi Attorney General's
5 web site all counsel individual citizens to guard and protect
6 and not publicly disclose their date of birth?

7 A. I was not aware of that. No.

8 Q. The last set of questions I have then, True the Vote has
9 been at least publicly accused of intimidating voters. Is that
10 a fair statement?

11 A. Those accusations have been made, yes.

12 Q. And those accusations are -- and I understand you take
13 great issue with those. But those accusations are sufficiently
14 public, right, that if you Googled True the Vote -- I did. I
15 came up with stories in the *Los Angeles Times*. Have you seen
16 those kinds of stories?

17 MR. NIXON: Your Honor, I would --

18 THE COURT: Sustained.

19 MR. NIXON: Thank you.

20 THE COURT: Relevance.

21 MR. NIXON: Relevance.

22 MR. PIZZETTA: Relevance, your Honor, would be -- I
23 think one of the -- the rationale behind the National Voter
24 Registration Act is to encourage registration. One of the
25 concerns we have would be, if voters know that public date of

1 birth is available to groups like True the Vote, and there is
2 lots of public accusations that True the Vote uses that type of
3 information to intimidate voters, that that would undermine the
4 purpose of the NVRA by --

5 THE COURT: Okay. I understand the argument.

6 MR. PIZZETTA: Okay.

7 THE COURT: It's argument, just that.

8 MR. PIZZETTA: And that was just for the relevancy,
9 your Honor. That's why --

10 THE COURT: I know. Okay. Overruled -- I mean --
11 sorry. Your objection to my ruling is overruled, and his
12 objection is sustained. Where am I? Who's on first?

13 MR. PIZZETTA: I'm not sure what that means, but what
14 I think it means is I'm done.

15 THE COURT: It means move on. If you want to put into
16 the record something about True the Vote's own reputation and
17 publicity, blah, blah, blah, I'll let you do that; but let's
18 just move on. This is --

19 MR. PIZZETTA: Got you.

20 THE COURT: I really want from this hearing just what
21 the witnesses can supply us that others cannot.

22 MR. PIZZETTA: Thank you, your Honor. Then I think I
23 have no more questions.

24 THE COURT: Thank you.

25 MR. NIXON: Nothing further.

1 THE COURT: Okay. Thank you, ma'am.

2 MR. SANDERS: Your Honor.

3 THE COURT: Oh, I apologize. Please forgive me.

4 MR. SANDERS: Your Honor, Bob Sanders for Jefferson
5 Davis County.

6 THE COURT: Thank you.

7 MR. SANDERS: Just very briefly.

8 **CROSS-EXAMINATION**

9 BY MR. SANDERS

10 Q. Ms. Engelbrecht, you have had a chance to look at the bill
11 of particulars that Mr. Pizzetta handed you. It's correct,
12 isn't it, that in that bill of particulars the people
13 associated with True the Vote visited circuit clerks in
14 Mississippi? Is that right?

15 A. Yes.

16 Q. All right.

17 A. Well, I mean, they visited, just in trying to understand
18 the process, you know, anybody that seemed like they could
19 help, circuit clerks among them.

20 Q. All right. It's correct, isn't it, that no person
21 associated with True the Vote made any direct contact with any
22 member of the Jefferson Davis County Election Commission? Is
23 that correct?

24 A. I -- I can't -- I don't know every member of the
25 commission.

1 THE COURT: Let's just ask it this way. Do you know
2 of any person who contacted Jefferson Davis County for their
3 voting records or anything else? Is that the question?

4 MR. SANDERS: Well, we stipulate they contacted the
5 circuit clerk's office.

6 THE COURT: Oh, okay.

7 MR. SANDERS: They didn't sue the circuit clerk. They
8 sued -- they sued the election commission. And I'm just trying
9 to find out whether anyone associated with True the Vote had
10 any contact or made any request to anyone with the election
11 commission, the defendant here.

12 THE COURT: Okay. Fair enough. Do you know anything
13 about that?

14 A. I mean, I don't. I know that volunteers went to Jefferson
15 Davis County, and I know that, you know, incident reports
16 were -- were a result of that. But I -- I can't tell you
17 everyone that they spoke with there.

18 BY MR. SANDERS:

19 Q. All right. And if I asked you that same question with
20 regard to the other eight defendant counties or county election
21 commissioners, would your answer be the same?

22 A. I --

23 THE COURT: The distinction is the election commission
24 versus the county clerk. Correct?

25 MR. SANDERS: Yes, ma'am.

1 THE COURT: All right. Do you understand?

2 A. I do. I do understand. I just -- I -- the understanding
3 of the process here, admittedly, was confusing. Because you
4 had -- if I may, you had the State saying they had no
5 responsibility over the county, the county saying they had no
6 responsibility over the State, the parties saying that they --

7 THE COURT: It's a different question, ma'am.

8 A. I'm so sorry.

9 THE COURT: That's all right. His question was, did
10 anybody that you're aware of go to a county election commission
11 or commissioner in any of these eight counties? It's a yes or
12 no question. Do you know of anyone who did go to an election
13 commissioner or election commission office? Yes or no. Do you
14 know?

15 A. No. I mean, they went to counties that -- that --

16 THE COURT: Did they go to the county clerk's offices?

17 A. Yes, in the county courthouse.

18 THE COURT: Okay.

19 MR. SANDERS: That's the circuit clerk. All right.
20 That's all.

21 THE COURT: Circuit clerk?

22 MR. SANDERS: Yes, ma'am.

23 THE COURT: Okay. Thank you.

24 MR. WALLACE: May I proceed, your Honor?

25 THE COURT: Yes, please.

CROSS-EXAMINATION

BY MR. WALLACE:

Q. Are you the same Catherine Engelbrecht who's been persecuted by the Internal Revenue Service?

A. Yes, sir.

Q. And have you -- has True the Vote received its qualification under Section 501(c)(3)?

A. Yes, sir.

Q. Your complaint alleges that True the Vote is organized under Texas law. What Texas law are you organized under?

A. I mean, we're incorporated in Texas. Is that --

Q. You are a corporation.

A. (Nods head affirmatively).

Q. You are a corporation. Do you have shareholders?

A. No.

Q. Okay. Are you organized as a nonprofit corporation?

A. As a nonprofit corporation.

Q. And you have no shareholders?

A. No shareholders, no --

Q. I think you already testified you have no members?

A. (Nods head affirmatively).

Q. And under Texas nonprofit corporation law, who is in charge of True the Vote?

A. Well, you have a board that forms your corporation, and then inside of that, you just -- you know, just depends on your

1 own articles of incorporation and bylaws.

2 Q. And how many board members do you have?

3 A. Three.

4 Q. Okay. And who are the board members?

5 A. Myself.

6 Q. Yes.

7 A. Dianne Josephs. Actually, there's four. Dianne Josephs,
8 Gregg Phillips and Brent Mudd.

9 Q. And where do those folks live?

10 A. Brent lives in --

11 Q. I don't need their addresses and birth dates.

12 A. Thank you.

13 Q. Generally, where do they live?

14 A. Brent lives in Georgia, Gregg lives in Texas, I live in
15 Texas, and Dianne lives in Texas.

16 Q. Okay. Thank you very much. Now, you testified that you
17 contacted the Mississippi Republican Party to seek information.
18 Is that correct?

19 A. Yes.

20 Q. I'm going to show you a letter of June 25th, and I'm going
21 to ask if you authorized your True the Vote's lawyer to send
22 this to the Mississippi Republican Party.

23 MR. WALLACE: If I may approach the witness, your
24 Honor.

25 THE COURT: Sure. What are you show -- let's mark it

1 as an exhibit. Okay?

2 MR. WALLACE: Yes, ma'am. Exhibit 1 would be fine.

3 THE COURT: Exhibit 1 for defense.

4 (OFF-RECORD DISCUSSION WITH STAFF ATTORNEY)

5 THE COURT: Counsel for the defense, can we just run
6 all the exhibits as defense exhibits, or would you rather be
7 segregated by actual party name?

8 MR. WALLACE: The record will show who put them in,
9 your Honor. Let's just do them 1, 2, 3, all the way through.

10 THE COURT: Defense Exhibit 1?

11 MR. WALLACE: Yes, ma'am.

12 THE COURT: I'm indifferent, but it is fairly simpler.

13 MR. WALLACE: They seem to be happy with that.

14 THE COURT: Thank you. Defense Exhibit 1 marked for
15 identification. Okay. You may proceed.

16 BY MR. WALLACE:

17 Q. Did you authorize True the Vote's lawyer to send this to
18 the chairman of the Mississippi Republican Party?

19 A. I did.

20 Q. Excuse me?

21 A. I did, yes.

22 Q. Okay. And what documents did you request in this letter?

23 (WITNESS EXAMINED DOCUMENT)

24 A. We just asked that the absentee ballots be preserved until
25 there would be an opportunity to review them.

1 Q. Okay. And other than the absentee ballot materials, you
2 didn't request any other documents from the Mississippi
3 Republican Party. Is that correct?

4 A. Well, we asked for absentee ballot applications, absentee
5 ballots and accompanying mailing envelopes.

6 Q. All of which have to do with absentee ballots. Is that
7 correct?

8 A. In the instance of this letter, yes.

9 Q. And you mentioned the ability to challenge absentee voters
10 at the polls. In the middle of the second paragraph, "True the
11 Vote believes that concerned citizens, including poll watchers,
12 who fit in both of the above-described categories, have been
13 denied the ability to challenge the absentee voter
14 qualifications."

15 Do you have personal knowledge of anyone who was denied the
16 ability to challenge absentee voter applications?

17 A. Many of our plaintiffs were.

18 Q. I'm asking for your personal knowledge, Ms. Engelbrecht.
19 Do you know of anyone who was denied the ability to challenge
20 absentee voter appli- -- qualifications?

21 A. My understanding is that many of our plaintiffs were not
22 given opportunity to review absentee ballot applications at
23 this -- at the point that this letter was sent.

24 Q. And that is what you have heard from your plaintiffs. Is
25 that correct?

1 A. Among many other things, yes.

2 Q. But you have -- but you yourself have no personal knowledge
3 of absentee -- of denials or the ability to challenge absentee
4 ballots? Personal knowledge is, you were there; you saw it.
5 That didn't happen, did it, Ms. Engelbrecht?

6 A. No.

7 Q. Okay. Do you have personal knowledge of --

8 A. Not at the time this letter was sent. I mean --

9 Q. Okay. And this letter, by the way, was sent the day after
10 the runoff, wasn't it?

11 A. Uh-huh (indicating yes). Yes.

12 Q. All right. Now, do you have personal knowledge of anyone
13 who challenged any voter in the runoff in the Republican
14 primary on runoff day?

15 A. I -- I don't know whether or not that happened on --

16 Q. Okay.

17 A. -- the day of the election.

18 Q. And I want to show you Exhibit 2.

19 MR. WALLACE: If I may, your Honor.

20 A. But, I mean, I'm not -- maybe I'm missing -- our request
21 wasn't to be able to challenge the voters on the day of the
22 election as it relates to absentee documents. It was just to
23 determine whether or not the absentee documents were properly
24 filled out. They don't come to the polls on election day.
25 They voted absentee.

1 BY MR. WALLACE:

2 Q. But the absent -- you are aware, are you not, that absentee
3 ballots are opened and counted on election day? Isn't that
4 correct, Ms. Engelbrecht?

5 A. That should be the process, yes.

6 Q. All right. And you are aware, and I think that your
7 lawyer's letter says, that people are entitled on election day
8 to challenge those absentee ballots. Isn't that the law?

9 A. That is my understanding of the law, but I understood you
10 to say to challenge voters, and I wanted to be very clear that
11 that's -- we're not challenging voters casting their vote in
12 person on election day but rather checking the accuracy of the
13 documents.

14 Q. And I did ask a different question. I asked if you know of
15 and if you have personal knowledge of any vote being challenged
16 of an in-person voter on runoff day, and I think you said you
17 had no such personal knowledge.

18 A. If I'm to give -- if I understand your definition of
19 "personal knowledge" correctly, then, no, I do not.

20 Q. Thank you. Let me show you another exhibit.

21 MR. WALLACE: If I may approach the witness.

22 THE COURT: Yes. You may approach witnesses without
23 asking, unless somebody gets threatening.

24 BY MR. WALLACE:

25 Q. Did you or your lawyer --

1 MR. WALLACE: And, your Honor, we might as well mark
2 it Exhibit 2 now.

3 THE COURT: I did.

4 MR. WALLACE: All right.

5 THE COURT: Do I have objections so far to these
6 letters?

7 MR. NIXON: Not from the plaintiffs. Not to either
8 exhibit.

9 THE COURT: All right. Then these two are received in
10 evidence. For the record, the second document -- are you going
11 to identify it?

12 MR. WALLACE: The second document is a letter from
13 Chairman Nosef to True the Vote's lawyers. There isn't a date
14 on page one; but if you look at page two, it was sent on
15 June 27th.

16 (EXHIBITS D-1 AND D-2 MARKED)

17 BY MR. WALLACE:

18 Q. Were you aware that this letter had been sent,
19 Ms. Engelbrecht?

20 A. Yes.

21 Q. And were you aware that the Republican Party had informed
22 you that it has no absentee ballot materials?

23 A. I was aware that that's what the Party said, yes.

24 Q. Okay. And since receipt of this letter, you have
25 nevertheless sued the Republican Party twice. Is that correct?

1 A. I'm sorry. I didn't understand.

2 Q. After the receipt of this letter, you nevertheless sued the
3 Republican Party twice. Is that correct, Ms. Engelbrecht?

4 A. Sued them twice?

5 Q. Yes. You sued us in Oxford and then you sued us here.
6 Isn't that correct?

7 A. Maybe I don't understand. I mean -- am I misunderstanding?

8 Q. True the Vote filed a lawsuit on July 1, I think, in
9 Oxford, Mississippi, voluntarily dismissed it, and then -- a
10 week later and then --

11 A. I'm so sorry.

12 Q. -- filed this lawsuit --

13 A. Yes. Yes. Yes. Yes. That's exactly right.

14 Q. All of that happened after the Party told you it had no
15 absentee ballot materials. Isn't that correct?

16 A. Yes.

17 Q. All right. Now, I want to show you another exhibit which
18 will be Exhibit 3.

19 (WITNESS EXAMINED DOCUMENT)

20 THE COURT: Do you recognize that document?

21 A. Yes, ma'am.

22 THE COURT: Okay. What is it, for the record?

23 MR. WALLACE: This is attached to a document that True
24 the Vote's lawyer has filed with the court.

25 BY MR. WALLACE:

1 Q. And, in particular, I want to direct your attention to your
2 verification, which is on page -- it appears to be page 15. If
3 you look at the computer-generated numbers at the top of the
4 page, on say page 15 of 20, "Verification," do you see that?

5 A. Let me catch up with you here.

6 THE COURT: Mr. Wallace, this document has -- well,
7 she's looking. This document has an exhibit tag copied on it.

8 MR. WALLACE: Yes, ma'am.

9 THE COURT: Exhibit 1. I know why, but I'd like to
10 put the exhibit sticker here today over that. Would that be a
11 problem?

12 MR. WALLACE: It will make the record much clearer
13 Thank you, your Honor.

14 THE COURT: Thank you.

15 MR. WALLACE: I think that ought to be done.

16 THE COURT: I just wanted it to be clear. Thank you.
17 Do you recognize that document?

18 A. Yes, ma'am.

19 THE COURT: Is that your signature?

20 A. Yes, ma'am.

21 THE COURT: Okay. Next question.

22 BY MR. NIXON:

23 Q. Beginning on page one in this second line, "I hereby
24 declare and verify that regarding the facts and allegations of
25 which I have personal knowledge, I believe them to be true."

1 Of what facts and allegations in the motion for temporary
2 restraining order do you have personal knowledge,
3 Ms. Engelbrecht?

4 A. Well, certainly, I had personal knowledge of what I had
5 experienced in the three counties.

6 Q. And on the second page, you list Hinds County and Rankin
7 County where you've had personal experience. You don't list
8 Panola County. And you list a lot of other counties. Do you
9 have any personal knowledge of what happened in Copiah County?

10 A. My understanding was that by my signature I was indicating
11 the -- that all the things that happened to all the volunteers
12 that were there and affiliated were, I mean, sworn and attested
13 to. So that became, in my understanding, my personal
14 knowledge.

15 Q. So you had personal knowledge of what happened in Hinds
16 County and Rankin County; but as to everything else in the
17 motion for temporary restraining order, you were relying on
18 what was told to you by the volunteers that you discussed
19 during your -- during your direct testimony. Is that correct,
20 Ms. Engelbrecht?

21 A. Yes.

22 Q. And you don't have any personal knowledge of anything that
23 the Mississippi Republican Party did that you discuss in the
24 TRO -- in the motion for TRO, do you, Ms. Engelbrecht?

25 A. I would have to read through this to make sure that I'm not

1 misstating anything.

2 Q. All right.

3 THE COURT: I'm going to give her a chance to do that
4 at a break.

5 MR. WALLACE: It's as good a time as any to break,
6 your Honor.

7 THE COURT: I'm not planning to break yet, but I'm
8 just saying I'm going to give her that chance so we don't waste
9 time in here. And then, counsel for plaintiff, you will be
10 able to represent that she does need to get back on the stand
11 or she doesn't. Right now it appears she doesn't know what's
12 in those papers. She only has a very limited amount of
13 personal knowledge. And we'll close this loop later. Okay.

14 MR. WALLACE: Thank you, your Honor.

15 BY MR. WALLACE:

16 Q. Do you have -- let me try to ask the question this way.
17 You testified that you know the Republican -- that the
18 Republican Party told you they didn't have any absentee ballot
19 materials that you asked for. Do you have any reason -- do you
20 have any personal knowledge to indicate that representation to
21 be false?

22 A. In the letter that Chairman Nosef wrote to one of our
23 attorneys he indicated that they didn't have any -- any
24 involvement in any of the absentee ballot process. That was
25 not what -- what we were being -- what I was being told -- what

1 we were being told, what our attorneys were being told by our
2 plaintiffs.

3 Q. And, in fact, Mr. Nosef told you that the absentee ballot
4 materials could be found in the circuit clerk's office or
5 should be found in the circuit clerk's office. Isn't that
6 correct?

7 A. I'm not certain. Does he say exactly where to find them?

8 (WITNESS EXAMINED DOCUMENT)

9 Q. In the last paragraph, "As far as possession of the ballot
10 material," and he cites the statute --

11 A. Oh, my gosh.

12 Q. -- that Section 645 and 911 clearly places the
13 responsibility of keeping the contents of the ballot box with
14 each county's circuit clerk.

15 Now, you have been to see those circuit clerks, haven't
16 you? Some of them.

17 A. Our volunteers have seen all kinds of people all over this
18 state.

19 Q. And you haven't learned anything to contradict what
20 Mr. Nosef told you, which is that the Mississippi Republican
21 Party doesn't have them.

22 A. Several of our volunteers, and I even believe a witness who
23 will testify later today, I believe, did have interaction with
24 party members.

25 THE COURT: Okay. Move on.

1 MR. WALLACE: All right. We'll move on, your Honor.

2 BY MR. WALLACE:

3 Q. Other than the absentee ballot materials, did you have
4 personal knowledge of the Republican Party being asked to
5 produce any other documents by True the Vote?

6 A. No.

7 Q. Okay. So as far as you know, the Mississippi Republican
8 Party has not denied you access to any documents. Isn't that
9 right?

10 A. As our volunteers were going out to the various counties,
11 they were being told various things. In certain instances it
12 was -- it was understood that the Party was, in fact, running
13 the primary. In certain instances it was that the county was.
14 In certain instances it was that the Secretary of State's
15 Office was giving direction, which is -- which leads to -- you
16 know, to my position now, which is, there was an awful lot of
17 finger-pointing going on.

18 The Party's responsible for the primary, but then the Party
19 wasn't responsible for the primary. The Secretary of State was
20 and then wasn't. So I apologize, but there was no clear line
21 of distinction, which is what made the approach that we took,
22 we felt, necessary.

23 Q. My question is not what True the Vote heard in the
24 counties. My question is what True the Vote said to the
25 Mississippi Republican Party. Isn't it a fact that you did not

1 ask Mississippi Republican Party for anything other than the
2 absentee ballot papers discussed in Exhibit 1?

3 A. To the extent that any county's Republican Party members
4 were there assuming a position of authority, it is entirely
5 possible that volunteers talked to the Party and asked for
6 documents.

7 Q. But you don't have any personal knowledge of anybody doing
8 that, do you, Ms. Engelbrecht?

9 A. Based on your definition of personal knowledge, I did not
10 personally experience that. However, as the representative of
11 the larger organization with volunteers who have attested to
12 experiencing that, then, in my mind, that qualifies as personal
13 knowledge.

14 Q. Okay. I think the judge will decide whether that
15 qualifies --

16 THE COURT: Okay. Stop.

17 MR. WALLACE: I'm sorry. I'm arguing. I'll quit.

18 THE COURT: Ask a question.

19 MR. WALLACE: Exhibit 4, your Honor.

20 THE COURT: All right. Any objection?

21 MR. NIXON: No objection.

22 THE COURT: All right. 4 is received.

23 (EXHIBIT D-4 MARKED)

24 BY MR. WALLACE:

25 Q. Can you identify Exhibit 4, Ms. Engelbrecht?

1 A. Exhibit 4?

2 Q. It says "Exhibit 1" at the bottom, but it was Exhibit 1 to
3 something in the court file.

4 THE COURT: I'm covering that, again, with my sticker,
5 Exhibit 4. Okay.

6 MR. WALLACE: Yes, ma'am.

7 BY MR. WALLACE:

8 Q. So this is now known as Exhibit 4, the "Breaking News, True
9 the Vote." Can you identify that?

10 A. Yes.

11 Q. And what is it?

12 A. It is a statement that was put out by our organization.

13 Q. And what's the headline?

14 A. "True the Vote Files Motion for Restraining Order Against
15 Mississippi Republican Party."

16 Q. Okay. I'd like you to look at page -- go back to what I
17 believe is Exhibit 3 -- it's the document right behind your
18 verification -- beginning on page 17.

19 A. I'm sorry. This isn't marked.

20 Q. If you'll look at the -- I'm asking you to look at the --
21 at the exhibit that begins with the letter of July 10, 2014. I
22 think --

23 A. Okay.

24 Q. -- I think it's the thickest exhibit you have.

25 A. Yes. It's also marked as Exhibit 1. So --

1 Q. They all do.

2 A. Okay.

3 Q. And if you go toward the end, page 17.

4 A. All right.

5 Q. That's the order granting motion for temporary restraining
6 order. Is there anything in the order that True the Vote's
7 lawyers submitted to the court that refers to the Mississippi
8 Republican Party in any way, shape or form?

9 A. Not -- not by name except on the title block, again, with
10 the understanding that the Party has claimed responsibility for
11 the primary.

12 Q. And in your press release you refer to the affidavits we
13 now have regarding the destruction of election documents. Do
14 you have any personal knowledge -- and we'll start with you
15 again, Ms. Engelbrecht -- any personal knowledge of any
16 destruction of any documents by the Mississippi Republican
17 Party?

18 A. We have a witness who's given sworn testimony or given an
19 affidavit to that effect.

20 Q. There is one affidavit that was filed with your motion and
21 that was Colonel -- Colonel Harding, I believe. You refer to
22 affidavits plural here. Do you have any affidavits of anybody
23 other than Colonel Harding about the destruction of anything?

24 A. Well, we list several things that we claim to have -- or
25 that we have affidavits for beyond that -- beyond the

1 destruction of documents.

2 Q. But the sentence you wrote, "If the affidavits we now have
3 regarding the destruction of election documents."

4 A. And other similarly stunning findings.

5 Q. So is it, in fact, the case that Colonel Harding is the
6 only affidavit you have about the destruction of election
7 documents?

8 A. I believe we -- I don't know if we've talked to other
9 people. I don't know. But we only have the one here that I
10 know of. But, again, this press release indicates that there
11 were other things that were found in addition to.

12 Q. And you're aware that -- and you're aware that Colonel
13 Harding's affidavit doesn't say anything about the Mississippi
14 Republican Party whom you sued in this lawsuit?

15 MR. NIXON: Your Honor, if it facilitates things,
16 Colonel Harding has been sitting in the witness room all
17 morning. And he's available to testify as to what specifically
18 he saw in his role as a party or either volunteer official and
19 what he was instructed to do.

20 THE COURT: Okay.

21 MR. WALLACE: And we withdraw the question in the
22 interest of moving on, and I --

23 THE COURT: I would like you to move on, please --

24 MR. WALLACE: Yes.

25 THE COURT: -- because you've exhausted this witness'

1 knowledge. It's perfectly clear she does not have personal
2 knowledge of anything --

3 MR. WALLACE: One of the things -- one of the things
4 she does have personal knowledge of, and I'll sit down.

5 BY MR. WALLACE:

6 Q. The night after you did that press release, you sent out a
7 fundraising -- fundraising e-mail, didn't you?

8 MR. NIXON: Objection to the relevance.

9 MR. WALLACE: She's here. She's asking for --

10 THE COURT: I'll allow it.

11 MR. WALLACE: -- attorney's fees.

12 THE COURT: I'll allow it.

13 MR. WALLACE: You'll allow it.

14 THE COURT: I will allow her to answer. Please
15 answer.

16 A. I have sent out a fundraising letter. I don't know if it
17 was the night after or not.

18 BY MR. WALLACE:

19 Q. And you have sent out several fundraising letters asking
20 people to help you in your fight against the Mississippi
21 Republican Party. Isn't that correct?

22 A. Mississippi Republican Party and other listed parties. I
23 mean, we've tried to describe the fullness of the suit.

24 Q. Any idea how much you've collected since you sent out that
25 e-mail?

1 THE COURT: I don't really care. Please move on.

2 MR. WALLACE: We're done, your Honor. Thank you.

3 THE COURT: All right. Any further questions for this
4 witness?

5 MR. TEEUWISSEN: Pieter Teeuwissen for Hinds County
6 Election Commission. I'll be brief, your Honor.

7 THE COURT: You may proceed.

8 **CROSS-EXAMINATION**

9 BY MR. TEEUWISSEN:

10 Q. Ms. Engelbrecht, I want to make sure I clarify your
11 knowledge. You said you had some personal knowledge or
12 personal involvement with Hinds County. And did I understand
13 your testimony correctly that the Thursday, Friday or Monday
14 before the June 24th election you went to Hinds County?

15 A. Yes, sir.

16 Q. And where did you go?

17 A. Into the courthouse into a room, I believe -- or an area I
18 believe was marked either the "Circuit Clerk" or it had on the
19 doors "Election Information." There was some confusion even
20 into where we should be directed. So I don't recall the exact
21 name of the office.

22 Q. Which courthouse did you go to?

23 A. The main -- I would assume the main courthouse. I mean,
24 I'm unfamiliar with -- with all of the courthouses.

25 Q. Are you aware there are two Hinds County courthouses in

1 Hinds County?

2 A. Not specifically, no.

3 Q. Are you aware there are two judicial districts in Hinds
4 County?

5 A. Not specifically, no. But, I mean, that doesn't surprise
6 me.

7 Q. I'm trying to find out where you went, and you gave us a
8 vague description.

9 A. Okay.

10 Q. Maybe you can tell us who you spoke to.

11 A. I didn't get her name. I mean, I signed the registry book,
12 if that's any help.

13 Q. Not to me. I didn't even know there was a registry book.
14 I've been practicing for 24 years.

15 A. Well, I didn't know there were two judicial districts. So
16 we're even.

17 Q. Okay. So you didn't get the name of the person that you
18 went to on the day you're not sure -- at the courthouse you're
19 not sure where it's located. Did you talk to the same -- did
20 you go more than once?

21 A. No.

22 Q. Do you know if the person you spoke with worked in the
23 circuit clerk's office or the election commission's office?

24 A. I know that the person that I spoke with showed me the --
25 the SEMS database and said that she couldn't provide anything

1 and didn't know how to provide anything and was as nice as she
2 could be but couldn't help.

3 Q. And the only thing you asked her for from your earlier
4 testimony was absentee ballot applications and envelopes.
5 Correct?

6 A. Yes.

7 Q. Do you know the name of the circuit clerk in Hinds County?

8 A. No.

9 Q. Did you ask to speak with the circuit clerk of Hinds
10 County?

11 A. No.

12 Q. Do you know the name of any election commissioners in Hinds
13 County?

14 A. Not -- no.

15 Q. Did you ask to speak with the chairwoman or chairman of the
16 election commission of Hinds County?

17 A. No.

18 Q. This unidentified person that you spoke to on the
19 unidentified day, did you tell that person you were seeking any
20 records pursuant to the NVRA?

21 A. No, not pursuant to the NVRA.

22 Q. And was this your only personal involvement in making a
23 request upon Hinds County?

24 A. Yes.

25 THE COURT: The question was, was this her only?

1 MR. TEEUWISSEN: Personal involvement in making a
2 request on Hinds County.

3 A. Yes.

4 BY MR. TEEUWISSEN:

5 Q. And any other involvement by True the Vote would have been
6 detailed in the submissions that have been submitted to the
7 court?

8 A. Yes.

9 MR. TEEUWISSEN: That's all I have, your Honor.

10 MR. SLAY: Your Honor, if I may. I'm Craig Slay,
11 Rankin County Election Commission. I apologize, your Honor.
12 We -- obviously, we have two counties that involve this witness
13 personally: Hinds, who we just heard from. I'm Rankin. And
14 so I apologize, but I feel like I need to address the witness
15 with a few questions.

16 THE COURT: Okay.

17 **CROSS-EXAMINATION**

18 BY MR. SLAY:

19 Q. I'm Craig Slay. I work with Rankin County. My questioning
20 will be similar to what you just heard. On the date that -- we
21 don't -- I believe your testimony is that you don't recall the
22 date that you went to Rankin County. It could have been the
23 Thursday, Friday or the Monday prior to the June 24 primary
24 election. Is that correct?

25 A. That's correct.

1 Q. All right. Do you recall where in Rankin County you went
2 to request the information that you sought?

3 A. It seemed to be an annex-type building that went in the
4 front, and there were a number of people there, very --
5 seemingly very engaged in all kinds of election, you know,
6 proceedings.

7 Q. Do you recall who you spoke with?

8 A. We spoke with many people there, but specifically with
9 Becky Boyd, I believe her last name is. Is that --

10 Q. Okay. You recall speaking to somebody named Becky?

11 A. I believe so. Yes.

12 Q. Okay. Did you get a business card?

13 A. I did not get a -- there again, I signed the registry
14 and...

15 Q. If your Honor will allow, can you describe the lady that
16 you spoke with, her appearance?

17 A. Gosh, I would guess late 50's, early 60's, Anglo. I don't
18 recall hair color. Maybe she wore glasses. I'm not sure. I
19 mean...

20 Q. Any idea what her responsibility or title is?

21 A. I believe she is the circuit clerk, I believe.

22 Q. Becky, circuit clerk.

23 A. And I -- again, I may -- that may be incorrect, but she
24 certainly seemed to have -- she was the one we were directed
25 to, and she certainly seemed to have knowledge of the process,

1 thorough knowledge of the process.

2 Q. Thank you.

3 A. And, again, was as nice as she could be.

4 Q. And to speed this along, you testified earlier that you
5 asked for the absentee ballot applications and the envelopes?

6 A. Yes.

7 Q. Did you ask for any other documents from Becky?

8 A. No, but I will say that she gave us -- I was with one other
9 person, and she gave us sample documents or blank documents so
10 that we would be able to familiarize ourselves with the
11 absentee ballot application, the variety of envelopes that
12 they're put in. She was very helpful, to the point that we
13 asked for the absentee ballot applications themselves.

14 Q. Did you ask for any other documents other than what we just
15 listed here?

16 A. On -- no, sir. No, no. No.

17 Q. Did you follow up with any writing of any kind to Rankin
18 County, whether the election commission, the circuit clerk or
19 anyone else, with respect to your request having been denied?

20 A. We did not, but we -- we sent a letter to the Secretary of
21 State believing that that would be a quicker route to
22 understand what we could and couldn't have.

23 Q. So your answer is, no, you didn't send any --

24 A. Not specifically to Rankin County. Again, no.

25 Q. Okay. Same question that Mr. Teeuwissen asked. When you

1 spoke to this person in Rankin County on whatever day it was
2 that you went, did you invoke -- did you mention the National
3 Voter Registration Act in any way during that conversation?

4 A. We talked for an awfully long time, and it's possible -- I
5 don't know specifically whether I did or not.

6 Q. You don't have any recollection of having invoked the
7 federal act?

8 A. It's entirely possible that I mentioned it. My
9 understanding of the NVRA is that I don't -- that a citizen
10 does not have to go in and claim under the NVRA, but that it's
11 just federal law.

12 MR. SLAY: Your Honor, I have nothing further.

13 THE COURT: Anybody else, defense? Redirect.

14 MR. NIXON: I just have -- I just have a couple of
15 questions for now, subject to her taking a break and looking
16 at...

17 **REDIRECT EXAMINATION**

18 BY MR. NIXON:

19 Q. Birth dates and voting records, do you have birth dates and
20 voting records?

21 A. Yes.

22 Q. Have you ever released that information anywhere?

23 A. No, no.

24 THE COURT: When you say "you," are talking about her
25 personally?

1 MR. NIXON: No. I'm talking about True the Vote.

2 Maybe I should --

3 A. It's the whole personal knowledge thing, I know.

4 BY MR. NIXON:

5 Q. When I say "y'all," "y'all," or "True the Vote," does True
6 the Vote have birth dates?

7 A. Yes.

8 Q. Do you release them at any time anywhere?

9 A. No.

10 Q. How long has True the Vote collected records?

11 A. Since early 2010.

12 Q. Okay.

13 MR. NIXON: That's all I have for right now, subject
14 to her having a chance to review the document.

15 THE COURT: Okay. Thank you. Anything else for this
16 witness? All right. You're excused, ma'am. Thank you. You
17 may step down. All right.

18 We're going to have a break, 15 minutes. We're going
19 to go until about 1 or 1:15 and then take a lunch break. Your
20 lunch break is directly -- well, I should say is inversely
21 proportional to the length of time you take with these next
22 witness or witnesses, inversely. So -- because I've told
23 counsel we need to finish this hearing today. I'd like to see
24 counsel up here. We're off the record.

25 (RECESS)

1 THE COURT: Are we ready to go?

2 MR. NIXON: Yes, your Honor.

3 THE COURT: Great. Your next witness.

4 MR. NIXON: That would be Kim Turner, the Assistant
5 Secretary of State for elections for the State of Mississippi.

6 (WITNESS SWORN)

7 THE COURT: Okay. Would you state and spell your
8 whole name for the record, please.

9 THE WITNESS: Sure. My name is Kim, K-I-M, Turner,
10 T-U-R-N-E-R.

11 THE COURT: Thank you. You may proceed.

12 **KIM TURNER,**

13 having first been duly sworn, testified as follows:

14 **DIRECT EXAMINATION**

15 BY MR. NIXON:

16 Q. Ms. Turner, my name is Joe Nixon. I'm a lawyer from
17 Houston, Texas. I know we've not had a chance to talk -- meet
18 yet. How are you doing today?

19 A. I'm fine. Thank you.

20 Q. Tell us your role -- what role you serve in the Secretary
21 of State's Office.

22 A. I am the Assistant Secretary of State in charge of the
23 elections division.

24 Q. And how long have you had that role?

25 A. Two years.

1 Q. Is it your job function to oversee the elections process
2 for the State of Mississippi on behalf of the Secretary of
3 State?

4 A. Not oversee, no. Our division is charged with many
5 different obligations and duties, but I would never say
6 "oversee the election." We provide support. We're a resource
7 for election officials and candidates and circuit clerks. But
8 we have no authority to actually oversee or conduct these
9 elections. We're a bottom-up state.

10 Q. Explain to the court what that means.

11 A. It means that elections are conducted at the local level.
12 So municipal elections are conducted by municipal election
13 commissioners or municipal executive committee members. And
14 state and county elections, including federal elections, are
15 conducted at the county level. So our county election
16 commissioners conduct general elections, and our county
17 executive committees conduct primary elections.

18 Q. Are you a lawyer licensed to practice law in any state?

19 A. In Mississippi.

20 Q. In Mississippi. Are you familiar with the National Voter
21 Registration Act?

22 A. I am.

23 Q. Okay. Are you familiar with the fact that the National
24 Voter Registration Act requires each state designate a chief
25 election officer for the enforcement of that statute?

1 A. Yes.

2 Q. Are you familiar with the fact that the Secretary of State
3 has been designated as the chief elections officer for the
4 State of Mississippi by a statute passed by the Mississippi
5 Legislature?

6 A. Under the NVRA, yes.

7 Q. Okay. Are you aware that there were document requests that
8 are being made on behalf of True the Vote and individual voters
9 in Mississippi, are being made pursuant to the National Voter
10 Registration Act?

11 A. I am aware, through secondhand knowledge, that public
12 records requests were made by people affiliated or associated
13 with True the Vote but not necessarily that they were made
14 through the National Voter Registration Act.

15 Q. Can we boil this whole issue down to whether or not the
16 State of Mississippi wants to produce birth dates in addition
17 to the voter registration name, address and unique
18 identification numbers?

19 A. I think "want" is a mischaracterization, but it is whether
20 or not the State of Mississippi and its subparts is able to
21 produce those dates of birth given the Mississippi Public
22 Records Act and Mississippi Statute 23-15-165.

23 Q. So you believe the State of Mississippi has a right or
24 obligation pursuant to its state law to not produce birth dates
25 to a request made subject to the National Voter Registration

1 Act?

2 A. We're talking about two separate issues between the
3 National Voter Registration Act and Mississippi Public Records
4 Act. And the requests that have been made have been made
5 pursuant to Mississippi Public Records Act, and those are state
6 law requests. It's not for me to guess what the legislature
7 meant, but it was that that's how our statute is written.
8 Dates of birth, Social Security numbers, they're exempt from
9 disclosure.

10 Q. Okay. Once again, though, is it -- is this whole dispute
11 just simply about -- do you think that True the Vote made a
12 request under state law, or do you think that it made a request
13 under federal law? And if they made a request under federal
14 law, would that end the lawsuit?

15 THE COURT: Okay. Compound question. Split it up.

16 BY MR. NIXON:

17 Q. Do you think True the Vote made a request under state law
18 or federal law?

19 A. Again, the State of Mississippi has seen no request. Our
20 office received no request. Information I received is
21 secondhand from circuit clerks' offices or other sources of
22 information. So I don't have any firsthand knowledge as to
23 their public records requests, but the information I have
24 received indicated it was pursuant to state law.

25 Q. If you had the understanding that the request was made

1 pursuant to federal statute, would the advice from the
2 Secretary of State's Office be to produce the information with
3 the birth dates?

4 A. It would depend on the particular information sought.

5 Q. And what would be the difference?

6 A. Well, not all information and documentation related to the
7 entire election process is subject to the National Voter
8 Registration Act.

9 Q. Which documents do you believe are not subject to the
10 National Voter Registration Act?

11 A. There's quite a number of documents. You've mentioned --
12 poll books are not subject to the National Voters Registration
13 Act.

14 Q. Are poll books relevant to maintaining accurate voter
15 rolls?

16 A. No.

17 Q. What is, in your opinion, a poll book?

18 A. According to law, a poll book is a list of those voters who
19 are eligible to vote in a particular election who are all
20 active, on active status.

21 Q. And you do not believe that the -- that the active voter
22 registration list is subject to the NVRA?

23 A. That's two different things. I didn't say an active voter
24 registration list. We talked about the poll books, which
25 represents a list of active voters who are eligible to vote in

1 a given precinct on election day. The voter roll is something
2 different. The voter roll is a complete list of all
3 Mississippi voters and all status categories.

4 Q. Would the voter roll include active voters?

5 A. Yes.

6 Q. Would the voter roll include any kind of designation of who
7 is an active voter and who is a suspense voter?

8 A. There is no such thing as a suspense voter. It would
9 indicate voters in different statuses. We have five statuses:
10 active, inactive, purged, rejected and pending.

11 THE COURT: Would it do that with the designation?

12 A. Yes, ma'am.

13 THE COURT: In other words, by each name it would
14 reflect this person's active, the next person is inactive, the
15 third person is suspended, or whatever?

16 A. It would indicate the status of each voter, yes, ma'am.

17 BY MR. NIXON:

18 Q. What is the difference between an active and an inactive
19 voter?

20 A. An active voter is eligible to cast a ballot -- a regular
21 ballot in an election. An inactive voter is one who has been
22 moved to that status by virtue of documentation or information
23 received that indicates a change of address outside the county
24 or outside the state, pursuant to which they are sent a
25 confirmation card pursuant to the NVRA at that time marked

1 "inactive."

2 Q. Okay. So for the court's edification, is -- you would mail
3 a voter registration card to an individual. And they are not
4 allowed to be forwarded by law. Right?

5 A. Well, again, for clarification, we wouldn't mail anything.
6 Our counties administer elections. So our county election
7 commissioners would identify their voters, and the county
8 election commissioners would cause a confirmation card to be
9 sent, you're correct, by non-forwardable mail.

10 Q. Okay. And so when a -- and when a voter registration card
11 is then returned back to the county, then that person is moved
12 from active to inactive status?

13 A. Incorrect.

14 Q. Okay. Explain how that works.

15 A. When the confirmation card is sent, the voter's moved from
16 an active to an inactive status. In the rare instance a voter
17 returns that confirmation card to the county election
18 commission completed, that voter is moved back to an active
19 status and their registration is updated.

20 THE COURT: So when you send the card, just send a
21 card to anyone who's previously on the voter roll -- not you --
22 when the county sends it, the voter is deemed inactive until
23 the card is received or something is received back?

24 A. When we have -- when the counties have information that
25 indicate a change of address, a move outside the county or the

1 state, so National Change of Address information, the counties
2 will send the confirmation card, and at that time, yes, marks
3 the voter in an inactive status.

4 The card -- we would like for voters to complete that card
5 and return it to the counties. And if the voter does take that
6 action, the information from the card is put into the State
7 Election Management System, and the voter's returned to an
8 active status with updated information.

9 If that card is not returned being completed by the voter,
10 it's just returned to the county as unable to locate, not
11 deliverable, that voter remains in an inactive status for the
12 next two federal general elections, after which time if they do
13 not vote, they can be removed or purged from the voter roll, or
14 in our case moved to a purged status.

15 BY MR. NIXON:

16 Q. Let's take the situation where a voter registration card is
17 mailed. It is returned to the county --

18 A. Did you say registration card?

19 Q. Well, a voter ID card. What is used in the State of
20 Mississippi to have -- the card that is mailed to the voters?

21 A. When you register to vote? Is that what you're asking?

22 Q. Yes.

23 A. When a person registers, they are sent a voter registration
24 card.

25 Q. What is the name of the card that we were talking -- we

1 were just now talking about?

2 A. A confirmation card.

3 Q. Confirmation card. A confirmation card -- is a
4 confirmation card mailed to every voter each year?

5 A. No.

6 Q. Is it -- how often is a confirmation card mailed to a
7 voter?

8 A. Only when there is a trigger -- we refer to it as a trigger
9 under the National Voter Registration Act. So it's some
10 information, reliable information. I used the National Change
11 of Address database which we -- all states participate in.
12 When a county receives reliable information that a voter on its
13 roll has moved outside the county or outside the state, that
14 trigger prompts the county to send a confirmation card.

15 Q. You use a term National Change of Address database?

16 A. Yes, NCOA.

17 Q. Who maintains that?

18 A. I'm assuming it's the U.S. Post Office.

19 Q. Okay. Are birth dates provided on that database, or do you
20 know?

21 A. I don't know.

22 Q. Okay. All right. So when you -- when you find out that
23 somebody's moved, you send them a confirmation card. If -- if
24 they return it to the county, they're maintained on active. If
25 it's not returned, they're moved to inactive.

1 A. They're moved to inactive status upon the sending of the
2 card.

3 Q. Okay. Now, if they show up and vote in person, are they
4 allowed to vote?

5 A. Yes.

6 Q. Do they have to sign any kind of provisional ballot?

7 A. If they're in inactive status, they vote by an affidavit
8 ballot, which is a provisional ballot, yes.

9 Q. And is the affidavit ballot -- do they give their then
10 current address?

11 A. The affidavit ballot envelope asks for different types of
12 information that the voter may fill out, including old address
13 and new address.

14 Q. And when they show up to vote, do -- is that information
15 maintained on the poll book?

16 A. No.

17 Q. Do they sign the poll book showing that they have voted?

18 A. No one signs the poll book.

19 Q. Is there any indicia on the poll book that a person voted?

20 A. No. Inactive voters, they are on the voter roll; they are
21 not in the poll book.

22 Q. Okay. Only active voters are in the poll book?

23 A. Correct.

24 Q. Okay. All right. And then the two other categories -- or
25 three other categories that you mentioned?

1 A. Pending, purged and rejected.

2 Q. What is pending?

3 A. Pending is a status for a voter who submits a mail-in voter
4 registration application. And by statute the clerks are
5 afforded a certain amount of time to obtain additional
6 information should they not have received a complete
7 application. And people are also put in a pending status to
8 ensure that the address provided with the registration was the
9 correct address to allow for the time for their card to be sent
10 to them, their registration card.

11 Q. Are pending voters listed in the poll books?

12 A. No.

13 Q. What's the next designation?

14 A. Purged.

15 Q. Purged. What does that mean?

16 A. Those are voters who are removed from the voter roll.
17 They're placed in a purged status, but they're not ever removed
18 but are put in a purged status. It's for voters who should no
19 longer be eligible to vote by reason of death, adjudication of
20 incompetence, moved, voluntary requests.

21 Q. Felons?

22 A. Not all felons. Conviction of a disenfranchising crime in
23 the state of Mississippi.

24 THE COURT: I couldn't understand one word you said.

25 A. Conviction of a disenfranchising crime in the state of

1 Mississippi.

2 THE COURT: Thank you.

3 BY MR. NIXON:

4 Q. Those voters are not included on the poll books either?

5 A. They're purged status.

6 Q. And then what's the last?

7 A. Rejected.

8 Q. And, obviously, those aren't on the poll book either.

9 A. No.

10 Q. But they are on the voter rolls?

11 A. Yes.

12 Q. Okay.

13 THE COURT: Can I just go back to the poll books for a
14 minute, if you don't mind. Tell us again, the poll books, what
15 exactly do they contain?

16 A. By statute the poll book will contain the name of the
17 voter, the address, the date of birth, the voter registration
18 number. And then it will have columns for each applicable
19 election. So with this past election, you had a column for the
20 June 3rd primary and a column for the June 24 primary runoff.
21 And then there's a bar code at the far right.

22 THE COURT: And the poll books contain all active
23 voters? Do they contain --

24 A. Correct.

25 THE COURT: -- inactive?

1 A. No.

2 THE COURT: And, obviously, they don't contain purged
3 voters or rejected voters.

4 A. They do not.

5 THE COURT: And what was the third category,
6 suspended?

7 A. Pending.

8 THE COURT: Pending. What's "pending" mean?

9 A. Pending is -- a simpler way to put it, those people who
10 have registered within the 30 days before the election, too
11 soon.

12 THE COURT: Too recently.

13 A. Too recently to be able to vote in the next election.

14 THE COURT: All right. And the poll books do not
15 contain any of those three categories of people?

16 A. Only active. Active voters only.

17 THE COURT: And what about the inactive? If an
18 inactive comes to vote, then what?

19 A. If an inactive voter comes to vote, their name is not in
20 the poll book. So they will be presented with a paper ballot
21 and allowed to vote an affidavit or provisional ballot, which
22 requires the completion of an affidavit ballot envelope, voting
23 by paper, the ballot's folded, put in the envelope, sealed, and
24 then put in the ballot box to be counted and evaluated after
25 the election by the election officials.

1 THE COURT: And the election officials are county
2 employees?

3 A. I'm sorry?

4 THE COURT: Are the election officials to whom you
5 just referred county employees?

6 A. Election commissioners are elected county officials.

7 THE COURT: Okay. So what do they look at?

8 A. They will look at the -- at the voter roll as a whole to
9 determine whether or not those voters should have been on the
10 voter roll or on the poll book. And they will determine if the
11 voter has moved within the county and they're still eligible.
12 That means they can still vote as long as they voted in their
13 new precinct. They look at different -- different things,
14 given the reason -- there's other reasons to cast an affidavit
15 ballot.

16 THE COURT: What about the affidavit? What does it
17 contain?

18 A. The affidavit itself is on the envelope. And all it asks
19 is for the name of the voter, their date of birth, the last
20 four of their Social, telephone numbers, old physical address,
21 new physical address, old mailing address, new mailing address,
22 which is all optional. And then they -- the affidavit -- they
23 have to state the reason why they believe they are being asked
24 to cast an affidavit ballot.

25 THE COURT: Why they believe they're being asked?

1 A. Correct. And they sign it. A poll manager signs it. And
2 then the voter is given their ballot to vote and seal.

3 THE COURT: Okay. You may proceed.

4 MR. NIXON: Thank you.

5 BY MR. NIXON:

6 Q. In a situation where an active voter shows up to vote but
7 reports -- self-reports, "I've moved," what do you -- what
8 happens in that situation?

9 A. The poll worker will ascertain whether or not their new
10 residence address still entitles this voter to vote in the
11 precinct in which he or she has presented. If they need to go
12 to a different precinct, the voter will be sent to the
13 appropriate precinct for their residence.

14 Q. Okay. So let's assume that they've moved within the same
15 precinct. What happens?

16 A. They are allowed to cast a ballot in the voting machine.

17 Q. Are they required to provide any information with regard to
18 their new address?

19 A. No.

20 Q. If they've moved to a different precinct, tell us what
21 happens then.

22 A. They'll present to their new precincts, and their name will
23 not be in that poll book. So they will be an affidavit voter.
24 They will vote by an affidavit ballot.

25 Q. The same that you just described to us?

1 A. Yes.

2 THE COURT: New precinct, you're assuming in the same
3 county?

4 MR. NIXON: In the same county. That's my next
5 question.

6 BY MR. NIXON:

7 Q. What happens if they move to a different county?

8 A. They're certainly welcome to cast a ballot. No voter is
9 ever turned away. But if they've moved outside of the county
10 and haven't updated their registration, their vote won't be
11 counted. But they will vote by an affidavit ballot.

12 Q. So if a voter who lived in county A moves to county B and
13 shows back up in county A at the right precinct where he was in
14 county A and says, *I'm on the active roll. I want to vote, but*
15 *I want you to know that I've moved to county B*, what happens?
16 He's told to go to county B?

17 A. No. The poll worker will tell the voter that he or she is
18 not eligible to vote, given that he or she has moved. But if
19 that voter is insistent, they are provided an affidavit ballot
20 and they are allowed to vote by an affidavit ballot.

21 Q. Is the information then used -- from the affidavit then
22 used to update the voter rolls?

23 A. Yes.

24 Q. Okay. So is it true to say that the poll books are
25 relevant to maintaining accurate voter rolls?

1 A. Not the poll books, no. The affidavit ballot envelopes,
2 yes, but not the poll books.

3 Q. Really the whole process.

4 A. I don't agree.

5 Q. If you don't vote for two federal election cycles, what
6 happens to your name? If an active voter chooses not to vote
7 for two federal election cycles, what happens to your name on
8 the voter rolls?

9 A. Nothing.

10 Q. How many cycles do you go through not voting when you are
11 moved from active to inactive?

12 A. Your question is unclear. No one is ever moved from an
13 active status by virtue of inactivity. So it doesn't matter if
14 you ever vote once you register. You'll stay active unless
15 some information or reliable documentation is provided which
16 indicates the voter's died, been convicted, adjudicated
17 incompetent or moved.

18 Q. How old do you have to be to vote in Mississippi?

19 A. 18, unless you'll be 18 by the date of the general
20 election. Then 17-year-olds are able to vote.

21 Q. And what date are you allowed to vote absentee
22 automatically? What age?

23 A. It's the same age.

24 Q. No, by absent -- automatically allowed to vote absentee.

25 A. No one is allowed to vote automatically by absentee in the

1 state of Mississippi.

2 Q. So if you reach the age of 65, it doesn't automatically
3 trigger the ability to vote by mail?

4 A. It entitles certain -- certain categories of absentee
5 voters may vote absentee by mail, and 65 is included, but there
6 is no automatic entitlement to vote by an absentee ballot.

7 Q. Is a -- I may be -- we may be saying the same thing but a
8 different way, but I just want to make it clear. When you
9 reach the age of 65, may you -- may you, as a right of being 65
10 or older, vote by mail in Mississippi instead of in person?

11 THE COURT: Could I make a suggestion on rephrasing?
12 If you're over -- or you're the age of 65 in Mississippi, are
13 you eligible to request an absentee ballot, and will you get it
14 automatically upon request? I think that's the issue.

15 MR. NIXON: That's it.

16 THE COURT: I'm not sure.

17 MR. NIXON: That's exactly right.

18 BY MR. NIXON:

19 Q. Is that right?

20 A. Not quite.

21 THE COURT: Okay.

22 A. Mississippi has several different categories which enable a
23 voter to vote by an absentee ballot. Being 65 years of age and
24 older is one category among many. Being 65 or older also
25 allows that voter to request and receive their absentee ballot

1 by mail.

2 Q. I see. I see.

3 THE COURT: As opposed to a 64-year-old who might be
4 eligible to vote absentee upon request but has to come in and
5 get it?

6 A. Yes.

7 THE COURT: Personally?

8 A. Correct. We -- we refer to it as in-person absentee
9 voting, meaning they have to go to the circuit clerk's office
10 in the county of their residence and complete an application.
11 And then upon completion of the application, they're provided a
12 ballot. And that's traditionally how absentee voting occurs
13 but for four categories of voters who may request and receive
14 absentee ballots by mail in addition to our UOCAVA voters,
15 which are -- it's U-O-C-A-V-A -- for the Uniformed and Overseas
16 Citizens Absentee Voting Act, which is a separate category of
17 absentee voters.

18 BY MR. NIXON:

19 Q. Does Mississippi register voters both with a Mississippi
20 registration form and a federal voter registration form?

21 A. We have a Mississippi registration form, and they're on
22 a -- a mail-in registration application form is not required by
23 federal law.

24 Q. Okay. And the federal law, of course, has birth date on
25 it.

1 A. Correct.

2 Q. And that is an issue clearly covered under the NVRA?

3 A. Yes.

4 Q. And that is a public record under the NVRA?

5 A. It is.

6 Q. So just to make things very clear, with regard to the
7 overseas voters who only use a federal application, if True the
8 Vote were to ask for the overseas voter applications with birth
9 dates, those are maintained by the State of Mississippi
10 Secretary of State's Office. Is that correct?

11 A. No.

12 Q. Those are maintained by who?

13 A. The individual county circuit clerk offices.

14 Q. Would a citizen who requested that information under the
15 NVRA be able to obtain the overseas voter applications with the
16 birth dates unredacted?

17 A. Yes.

18 THE COURT: What was the very last thing, under what?

19 MR. NIXON: Unredacted.

20 BY MR. NIXON:

21 Q. With regard to voter list maintenance, would whether or not
22 someone appeared and voted be a reason to keep that person on a
23 voter registration list?

24 A. You'll need to rephrase your question.

25 Q. I may have asked it before, and I think I did. So let me

1 ask a different question. Under the NVRA, is it your
2 understanding that you are required to keep all records
3 concerning voter registration?

4 A. Yes.

5 Q. Would a poll book fall into a category that -- of all
6 documents that involve voter registration?

7 A. No.

8 Q. That's what your opinion is?

9 A. Correct.

10 Q. Okay. Are you familiar with the Help America Vote Act?

11 A. Yes.

12 Q. Okay. It's a federal statute.

13 A. Yes.

14 Q. Does the Help America Vote Act dictate that the state and
15 not the counties are the repository of voter registrations?

16 A. I would have to look.

17 Q. Okay. And you would defer to that act?

18 A. Yes.

19 Q. Okay. Now --

20 THE COURT: Mr. Nixon, is your last question based on
21 or does it imply a time frame?

22 MR. NIXON: I'm not sure I understand.

23 THE COURT: Well, is it possible -- and you might just
24 want to ask this -- if the state is the repository of voter
25 records after a certain point in time after an election. I

1 don't know the answer. If you do or you're interested, you may
2 ask. You don't have to.

3 MR. NIXON: No, no, no. I'll ask those questions.
4 And the last one is more of a legal technicality that I think
5 is -- may --

6 THE COURT: If you don't care, I don't care. I
7 mean --

8 MR. NIXON: It's covered in our brief, and I do care.
9 But to the extent that she says, *I know what the law says*, then
10 I'm not going to --

11 THE COURT: I misheard. I'm having a terrible time
12 hearing. Even though I can hear the words, I just -- I mean
13 hear the speaking, I'm having trouble because the speech is so
14 fast. So I apologize if I'm sounding like I'm behind the
15 curve. Go ahead.

16 MR. NIXON: Okay.

17 BY MR. NIXON:

18 Q. Do you know whether or not the Help America Vote Act
19 requires that the State of Mississippi be the -- and not the
20 counties be the repository of voter registrations?

21 A. You're being less detailed. Counties accept voter
22 registration applications. They process them. HAVA
23 requires that we have a statewide voter roll which is
24 maintained at the state level.

25 THE COURT REPORTER: The what requires?

1 THE WITNESS: HAVA, H-A-V-A, the Help America Vote
2 Act.

3 A. -- requires there be one centralized voter roll maintained
4 by the state, which it is. It's the Statewide Election
5 Management System. So to that end, the state is the repository
6 for all voter roll information in that it is the administrator
7 of the Statewide Election Management System. But registration,
8 by statute, is done at the county level with paper applications
9 retained by the counties and scanned into SEMS, S-E-M-S.

10 BY MR. NIXON:

11 Q. And SEMS stands for?

12 A. Again, the Statewide Election Management System.

13 Q. Okay. Let's clear up just a couple of things with regard
14 to the process. Who creates the voter rolls to be used in an
15 election?

16 A. Are you asking about the voter roll or the poll book?

17 Q. Well, let's just start at the big. Who has the voter
18 rolls?

19 THE COURT: Can I make a suggestion? Tell us the
20 process of how someone would register and then -- you know,
21 where they go? We're not an over-65 person. We're just a
22 regular 30-year-old living in Padula County or whatever. Pick
23 one. Well, pick Yazoo County because they're not here.
24 They've elected not to show up, and they can't contradict you.

25 Anyway, pick a county and tell us who does what, and

1 give us the technical name, to the extent there is one, under
2 state law or practice in Mississippi.

3 A. Mississippi allows for two types of registration for a
4 normal, average person, which is in person in the circuit
5 clerk's office or by a mail-in registration application. Those
6 paper applications are sent to the circuit clerk of the county
7 of residence of the voter. That information is entered into
8 the Statewide Election Management System, including scanning of
9 the actual registration application. Once the information is
10 put into SEMS, which is the statewide voter roll, all voters
11 from all 82 counties are in one central location.

12 THE COURT: Scanned?

13 A. Scanned registration applications. They will also scan any
14 other documentation pertaining to that voter over the course of
15 that voter's history. And that's -- that's voter registration.

16 BY MR. NIXON:

17 Q. What about the federal postcard application?

18 A. Military overseas can register to vote by the federal
19 postcard. Again, it's a paper application, or if it's e-mailed
20 or faxed. It's retained by the circuit clerk of that voter's
21 residence. That information, again, is entered into SEMS. It
22 creates a voter record for that voter. Their information is
23 scanned, the document's available, and they become a part of
24 the statewide voter roll.

25 Q. Do you know why the federal postcard application ballot

1 requires -- is subject to open disclosures and the others are
2 not?

3 A. No.

4 Q. All right. Let's get back to the registration process.

5 A. Well, I never said others were not. You never asked about
6 registration applications.

7 Q. Are registration applications subject to open records under
8 the federal Voter Registration Act?

9 A. Everything -- everything these clerks' offices and our
10 office has is subject to public disclosure. The issue is what
11 may be redacted.

12 Q. Okay. All right. Well, we've already decided that --
13 you've already disclosed that the federal postcard application,
14 which includes birth dates, is not subject to redaction.

15 A. And neither are Mississippi state registration
16 applications.

17 Q. So the registration application, which includes birth
18 dates, is not subject to birth date redaction?

19 A. It may include a birth date, yes.

20 Q. And it's not subject to a redaction?

21 A. Not under the NVRA.

22 Q. So if we can obtain the birth date application -- the voter
23 application which includes the voter's birth date, that
24 information is uploaded through SEMS and put on a voter roll
25 and includes a voter's birth date, why is a person under the

1 NVRA not entitled to the voter roll with the birth date
2 included?

3 A. There are no -- there have been no requests for the voter
4 roll.

5 Q. And so in answer to my question, so we're very clear here,
6 if a request were made for the voter rolls for the state of
7 Mississippi, which includes birth dates, maintained by
8 Secretary of State's Office, the Secretary of State would
9 provide that information?

10 A. Not for the entire voter roll, no.

11 Q. Would it -- would it provide birth dates?

12 A. I'm not -- I don't understand your question.

13 Q. Would the voter roll that was requested of the Secretary of
14 State's Office pursuant to the NVRA require -- would it include
15 birth dates?

16 A. No.

17 Q. Why not?

18 A. Because that is not necessarily subject to public
19 disclosure at -- it includes every voter ever registered in the
20 state of Mississippi. And pursuant to our own law, it's not
21 subject to disclosure.

22 Q. Okay. So that we're really clear here, if I ask for
23 someone's application, I would get a copy of their application
24 under the NVRA?

25 A. Yes.

1 Q. And that application would include the birth date?

2 A. It may. It may not.

3 Q. There is a space to be filled out by the voter which has
4 birth date?

5 A. Yes.

6 Q. Does the Mississippi application also include a space for
7 Social Security number?

8 A. The last four digits.

9 Q. We all agree that Social Security information is protected
10 under a separate federal statute. Would you agree with me on
11 that?

12 A. I'm sorry. I didn't -- no. I didn't hear you.

13 Q. Do we agree -- do you and I agree that Social Security
14 numbers are protected under a separate federal statute?

15 A. Yes.

16 Q. Okay. So if a person filled out the voter -- the voter
17 registration application with their birth date and not with
18 their last four digits of their Social and I asked to see that,
19 I could receive that under the -- under the NVRA with the birth
20 date information included?

21 A. Yes.

22 Q. For every person who's ever filled out an application in
23 the state of Mississippi?

24 A. There's different facts and circumstances that are -- you
25 can't be that unilateral across the board.

1 Q. I'm sorry. I didn't understand that. I can't be that --

2 A. In this situation where you mention an application -- there
3 are certain -- I don't know. I can't answer that question.

4 Q. Okay. All right.

5 THE COURT: I do have a question, though. If the
6 request were for current active voters, if the request were for
7 the voter rolls -- roll -- is there one voter roll,
8 technically?

9 A. Uh-huh (indicating yes).

10 THE COURT: If the request was for one voter -- for a
11 copy of the voter roll showing current eligible voters, would
12 the State -- Secretary of State feel it necessary, because of
13 federal law, to turn over the voter's name, address, date of
14 birth and voter ID number, active voters only?

15 A. No. When we produce a voter roll, it excludes the date of
16 birth but provides a VR, voter record number.

17 THE COURT: The voter record number is what?

18 A. It's their voter registration number. It's a unique number
19 assigned to every voter.

20 THE COURT: That's what I thought. It's not that they
21 voted in a particular election. It's the registration that a
22 person is assigned that's unique --

23 A. Correct.

24 THE COURT: -- as you just said. Okay. Does the
25 State take the position from where you -- as you personally

1 understand it or in your official capacity understand it, that
2 turning over birth year would be protected even if birth date
3 and month were redacted? Or have you not considered that?

4 A. It would be the entire field which is redacted. The system
5 was designed to exclude the protected information. So SEMS,
6 the Statewide Election Management System, will not produce that
7 report -- that voter roll with the date of birth at all.

8 THE COURT: Okay. Thank you.

9 MR. NIXON: That's all the questions I have. That's
10 all the questions I have. Thank you.

11 **CROSS-EXAMINATION**

12 BY MR. PIZZETTA:

13 Q. Hello, Ms. Turner.

14 A. Hi.

15 Q. There was testimony about a couple of different types of
16 documents. I want to keep them straight. Absentee ballot
17 envelopes, where are they right now?

18 A. They are sealed in their respective ballot boxes in every
19 circuit clerks' office.

20 Q. When were they placed into those sealed boxes?

21 A. When an absentee ballot is voted, it is immediately placed
22 into a sealed ballot box until election day, at which time it
23 goes to the respective precinct for that voter.

24 The short answer is, they are always sealed in a sealed
25 ballot box from the time that they are cast until a period of

1 time after the election.

2 Q. And they're -- is that state law? Or what requires them to
3 be sealed and secured?

4 A. State law.

5 Q. Is that the same ballot box where -- are absentee ballots
6 located in that box?

7 A. Yes.

8 Q. And are affidavit ballots located in that box?

9 A. They will be deposited in that box throughout election day.

10 THE COURT: Throughout election day?

11 A. Yes, ma'am.

12 THE COURT: Was your question about absentee ballots
13 or actual ballots?

14 MR. PIZZETTA: Absentee ballots, your Honor.

15 THE COURT: So absentee ballots are placed in the
16 sealed ballot box?

17 A. Yes.

18 THE COURT: And they're not opened until when?

19 A. Until the polls close on election day at 7 p.m. At that
20 time the poll managers remove the absentee ballots, envelopes
21 and applications, to process to determine whether they may be
22 counted or rejected. So after --

23 THE COURT: Poll managers?

24 A. Poll workers.

25 THE COURT: Poll workers?

1 A. Uh-huh (indicating yes).

2 THE COURT: And are they opened?

3 A. The majority of our counties use the TSX voting machines.
4 So for 77 counties, the absentee ballots that are accepted,
5 they are not opened at the precinct. They are put back into a
6 sealed ballot box, taken back to the courthouse that night.
7 And there they have centralized scanners. And that's when the
8 absentee ballots are actually opened at election central.

9 For five counties in Mississippi that use their own
10 precinct scanners, they do open the accepted absentee ballots
11 at the poll -- or the precincts and scan them there.

12 THE COURT: Thank you.

13 BY MR. PIZZETTA:

14 Q. Let me see if I can help with an example. If a citizen
15 comes in, hypothetical, on let's say July 7th and says, *I would*
16 *like to inspect the absentee ballot envelopes*, where is that
17 ballot -- where would that absentee ballot envelope be at that
18 time?

19 A. In the sealed ballot boxes.

20 Q. And it's sealed in order why? Why is it still sealed? The
21 election has happened a couple of days ago. Why is it still in
22 a sealed box?

23 A. The boxes will remain sealed for a period of time to cover
24 certain statutory examination period. There's a 12-day
25 examination period where the candidates may examine the

1 contents of every ballot box. And the ballots -- ballot boxes
2 actually remain sealed for so long as an election contest may
3 be filed so as to preserve the election materials in their
4 state, in the state in which they were left post-election.

5 Q. Chain of custody issues and other such things?

6 A. Correct.

7 Q. So if someone comes in and asks for an absentee ballot on
8 July 7th, the answer they may get from a circuit clerk as to
9 whether they can see it would be different than if they came
10 and asked for one maybe a month later or two months later after
11 the election contest has passed?

12 A. Yes.

13 THE COURT: Does this assume that the absentee ballots
14 cannot affect the election in a particular county? I mean, how
15 could you not count the ballots?

16 A. No. They're -- they are counted. They are scanned and
17 counted on election night. But then all election material is
18 return to sealed ballot boxes after the counting has been
19 completed. And all the materials stay in those sealed ballot
20 boxes to preserve the integrity of the election until the
21 period of time has passed for a candidate to file a contest.

22 THE COURT: Would it be better said that the boxes are
23 resealed?

24 A. They are sealed -- it would be proper to say resealed.

25 They are opened and resealed several times, but, yes, they are

1 resealed.

2 THE COURT: Because this testimony is indicating that
3 the ballots that are filed by absentee vote -- sent in by
4 absentee voters are never looked at until sometime in the
5 future. And it's really inconsistent with what you said about
6 the scanning, which is my confusion.

7 So if I could try again to summarize, absentee ballots
8 are opened on election night after the polls close, generally
9 at the courthouse, not at a precinct, but in a few precincts
10 they have their own scanners and they open those absentee
11 ballots. The absentee ballots are actually in an envelope? Is
12 that true?

13 A. It is.

14 THE COURT: And the envelope on the outside has a
15 signature demonstrating that the envelope is being submitted by
16 the authorized voter. Is that true?

17 A. It should have two signatures, the voter's signature and
18 either a witness or a notary's signature.

19 THE COURT: Okay. But the point is, then, that the
20 envelope with the ballot in it is opened. Of course, the box
21 has been unsealed and we've gotten these absentee ballots.
22 We've opened now the envelope which is holding a single ballot.
23 That single ballot is scanned somewhere and then put back in
24 the envelope it came from?

25 A. No. It's kept separated from its envelope.

1 THE COURT: Okay. And what happens to it, to the
2 ballot?

3 A. The ballot will be put together with all other paper
4 ballots that may have been cast and counted at the election.
5 And then the paper ballots, the envelopes, the applications,
6 affidavit ballots, their envelopes, all the election materials
7 are put back into their respective ballot boxes.

8 THE COURT: Okay. So these paper ballots -- all
9 absentee ballots are paper. Correct?

10 A. Yes.

11 THE COURT: Okay. Absentee ballots are opened and
12 scanned with the other paper ballots from a particular
13 precinct. Correct?

14 A. Yes.

15 THE COURT: And what happened -- how do you associate
16 a particular absentee ballot with an envelope that it came in?

17 A. You don't. The process is to separate the ballot from the
18 envelope once it's opened so as to ensure the voter's privacy
19 in casting their ballot.

20 THE COURT: Right. It's secret ballot, as they say.

21 A. Correct.

22 THE COURT: Okay. So the envelopes are retained as
23 well but independent of the ballots?

24 A. Yes.

25 THE COURT: And the envelopes from a particular

1 precinct and the ballots from that same precinct, paper
2 ballots, are put back in the precinct box and resealed for
3 posterity?

4 A. Yes. Yes.

5 THE COURT: Okay. And that's the same process for
6 affidavit ballots, or are they in a separate box or what?

7 A. No. They have the same box. Affidavit ballots, part will
8 be processed the night of the election. Part will be processed
9 either the day after or two days after. And then we have a
10 category of affidavit ballots now that are counted five
11 business days after the date of the election.

12 So at various times the ballot boxes will be broken open,
13 affidavits processed, those affidavits scanned, and then the
14 ballot boxes -- materials put back in and ballot boxes
15 resealed. Those ballot boxes will be unsealed and resealed at
16 least once, if not two more times, after an election night.

17 THE COURT: And when they're opened, does someone have
18 to sign that they opened for chain of custody?

19 A. Yes.

20 THE COURT: And then sign that they've resealed?

21 A. There are log forms that require the numbers of the seals
22 to be recorded and, again, to account for who is entering that
23 box.

24 THE COURT: Okay.

25 A. And then resealing.

1 THE COURT: Okay.

2 BY MR. PIZZETTA:

3 Q. And part of it -- and tell me about what candidates then
4 have in this particular 12-day period. What are they doing
5 with these ballot boxes?

6 A. The candidates may do a ballot box examination, which they
7 would -- the circuit clerk who has custody of the ballot boxes
8 at that time, they will open the boxes and allow the candidate
9 or his or her representative to examine all that is in the
10 ballot box, which would, of course, include absentee envelopes,
11 affidavit envelopes, applications for absentee. It would also
12 have the receipt book that is used at the polling place on
13 election day.

14 Q. As a general matter, what is the date -- when was the date
15 of the candidates' ballot box inspection in this election?

16 A. In this election both candidates, Senator Cochran and
17 Senator McDaniel, commenced their ballot box examinations in
18 all 82 counties on July 7th.

19 Q. And that means they -- they showed up and looked through --
20 they were looking through the ballot boxes beginning July 7th?

21 A. Yes.

22 Q. And they only had how many days to complete that
23 inspection?

24 A. Those inspections must be completed within 12 days from the
25 date the county certifies the election.

1 Q. Does the Secretary of State's Office have possession,
2 custody or control of poll books?

3 A. No.

4 Q. Has the Secretary of State's office received any request to
5 produce poll books or other documents under the NVRA from
6 plaintiffs?

7 A. No.

8 Q. Has the Secretary of State's Office received any requests
9 whatsoever to produce documents to plaintiffs under state law?

10 A. Yes. True the Vote did provide us or mail to us a public
11 records request specifically made under Mississippi Public
12 Records Act for large volumes of information.

13 Q. But they didn't ask under NVRA from your office?

14 A. No. The letter is very specific. It was a request made
15 under our state law.

16 Q. All right. And I think I understood what you testified, to
17 shift -- to touch a gear for a moment. Inactive voters, are
18 they still registered voters?

19 A. Yes.

20 Q. And inactive voters can still cast ballots?

21 A. Yes.

22 THE COURT: But then are we into the paper ballot?

23 A. Yes.

24 BY MR. PIZZETTA:

25 Q. When a voter walks in and they're inactive, which means

1 they're not in the poll book, and they cast an affidavit
2 ballot, what document is it then that an election official
3 would go to look to see if they were a registered voter?

4 A. The poll workers in the precincts are usually provided
5 what's called a master list in their supply box, and a master
6 list is actually a printout of the voter roll. So they would
7 have access to be able to determine if a voter should be voting
8 in a different precinct or if they have been moved to a
9 different precinct.

10 Q. So does an election worker ever look to the poll book to
11 see whether or not someone is an inactive voter eligible to
12 cast an affidavit ballot?

13 A. No.

14 MR. PIZZETTA: Your Honor, may we have these marked?
15 I believe it is D-5 and D-6.

16 THE COURT: Yes.

17 MR. PIZZETTA: All right. And to be -- so we're
18 clear, why don't we have the document that's marked "Democratic
19 Poll Book" marked as D-5 --

20 THE COURT: Okay.

21 MR. PIZZETTA: -- and "Republican Poll Book," D-6.

22 THE COURT: Okay. It's done. Any objection to these
23 documents?

24 MR. NIXON: Yes, Judge, I do. There has been
25 redactions made. So, I mean, these aren't -- I believe they're

1 redactions, unless they're actually --

2 THE COURT: Well, there are black marks. I see your
3 point.

4 MR. NIXON: Yes. So I don't know what's been
5 redacted.

6 THE COURT: Well, let's find out what the offer is.
7 What's the offer?

8 MR. PIZZETTA: We have -- just to get the court
9 finally to see what a poll book is, and I think Ms. Turner will
10 be able to explain what it is that is redacted underneath. I
11 think it will --

12 THE COURT: Okay. I'm going to overrule your
13 objection.

14 (EXHIBITS D-5 AND D-6 MARKED)

15 BY MR. PIZZETTA:

16 Q. Ms. Turner, looking at D-5, can you identify that for us?
17 Do you see at the top what county it comes from there?

18 A. Yes, I do. It's -- these are poll books generated by
19 Jefferson Davis County. One is the Republican poll book and
20 the other is the Democratic poll book.

21 Q. You've seen poll books before.

22 A. Yes.

23 Q. You've seen unredacted poll books before.

24 A. Yes.

25 Q. Tell the court what it is that is redacted there on D-5 and

1 D-6.

2 A. The date of birth.

3 Q. Okay. So when you were testifying a moment ago about what
4 plaintiffs would be entitled to under even state law, is this
5 an example of -- if they pay the per-copy charge, is this an
6 example of what is permissible to provide to plaintiffs under
7 state law?

8 A. It is.

9 Q. Just so the --

10 THE COURT: Wait a minute. Is the -- under state law,
11 is the poll book on the date of the election redacted?

12 MR. PIZZETTA: Your Honor, I'm sorry. I don't
13 understand your question.

14 THE COURT: You've given me a redacted version of the
15 poll book from Jeff Davis County, a sample, obviously. Is this
16 the way it was presented to the poll workers, or were the poll
17 workers seeing the unredacted version of this document?

18 BY MR. PIZZETTA:

19 Q. Ms. Turner, can you answer that?

20 A. The poll workers would have seen unredacted versions.

21 THE COURT: I see. Okay.

22 MR. SANDERS: Your Honor, those redactions that were
23 made were made this morning.

24 THE COURT: That's fine. Thank you.

25 MR. PIZZETTA: No originals were redacted.

1 THE COURT: That's fine.

2 BY MR. PIZZETTA:

3 Q. Noticing, though, D-5 and D-6, the first name is the same
4 on both of them. Is that right?

5 A. Right. They're identical.

6 Q. All right. Why is that?

7 A. Well, because in the state of Mississippi, we don't
8 register by party affiliation. So when you present to your
9 polling place on an election day, the voter may go to the
10 Republican table or the Democratic table. So each poll book is
11 identical since we don't have specific lists of Republican
12 voters and specific lists of Democratic voters.

13 THE COURT: Is that called an open primary?

14 A. Yes, it is, your Honor.

15 BY MR. PIZZETTA:

16 Q. When I look at D-5 and it's marked "voted" next to one of
17 the names, who writes that term in?

18 A. The poll worker. The check-in poll worker.

19 Q. So looking at D-5 and D-6, if you wanted to determine
20 whether Mr. Allison voted in the Democratic primary or the
21 Republican primary on June 3rd, can you tell by looking at that
22 poll book?

23 A. You can.

24 Q. All right.

25 MR. PIZZETTA: Your Honor, no further questions.

1 THE COURT: Anything further, Mr. Nixon?

2 MR. NIXON: Just a few questions.

3 MR. SANDERS: Your Honor?

4 THE COURT: Oh, I apologize. I really do. I'm so
5 sorry.

6 MR. SANDERS: I have cross just very briefly.

7 **CROSS-EXAMINATION**

8 BY MR. SANDERS:

9 Q. Ms. Turner, my name is Bob Sanders.

10 THE COURT: Do you want to offer that as an exhibit?

11 MR. SANDERS: We do want to offer it.

12 THE COURT: You want it marked?

13 MR. SANDERS: Yes, ma'am.

14 THE COURT: So this is Defendant's Exhibit 7.

15 (EXHIBIT D-7 MARKED)

16 BY MR. SANDERS:

17 Q. Ms. Turner, I'm Bob Sanders, representing the Jeff Davis
18 Election Commission. Can you tell us what a VR-28 report is?

19 A. It's a representation of the voters who voted in any given
20 election.

21 Q. All right. And I've handed you what's been marked as
22 Exhibit 7, and I'll represent to you -- and you can see on the
23 first page it appears to be a VR-28 report from the June 3rd,
24 2014, election. Do you see that?

25 A. Yes.

1 Q. All right. And the next page is the first page of a VR-28
2 report for the runoff election on June the 24th. Do you see
3 that?

4 A. I do.

5 Q. All right. Can you explain to Judge Atlas what the
6 different columns are here that are represented on this VR-28?

7 A. Sure. The first column is the voter ID, which is the
8 voter's unique registration voter number. Then you have the
9 voter name, their address, city, the particular precinct in
10 which the voter would have voted in this election, the date the
11 voter registered and the party primary in which the voter voted
12 on each election day.

13 Q. All right. Now, this VR-28 for Jeff Davis County, these
14 two reports for the primary and the runoff, they would be
15 several hundred pages long. So I didn't bring that. But you
16 can -- you'll have the name of each person who voted in each
17 primary, and it will show whether they voted in the Democratic
18 or the Republican primary. Is that correct?

19 A. Yes.

20 Q. And if you had someone who had the same name, two John
21 Jones, one voted in the Democratic primary and then the
22 Republican runoff, you would be able to distinguish between
23 those two John Jones by the unique voter ID number. Is that
24 correct?

25 A. You would.

1 Q. All right. So so far as that issue is concerned, the
2 unique voter identification number is a proxy for the birth
3 date for that purpose. Is that right?

4 A. Yes, sir.

5 Q. All right.

6 MR. SANDERS: Your Honor, I don't have any more
7 questions, but I wanted the court to have an understanding
8 of -- in our response to the TRO, we told the court that we
9 have sent all of this information to the plaintiffs, and I just
10 wanted the court to see what it is.

11 THE COURT: Okay. So you're saying you've already
12 provided --

13 MR. SANDERS: Yes, your Honor.

14 THE COURT: -- the full list --

15 MR. SANDERS: Yes, ma'am, and it's a couple --

16 THE COURT: -- of the voter -- the unofficial voting
17 list to the plaintiff.

18 MR. SANDERS: For the primary and the runoffs. And
19 it's 2- or 300 pages long. We sent it to them in an e-mail
20 prior to the time we filed our response to the TRO. And,
21 frankly, I got this from the circuit clerk, not from the
22 election commission. But he just cooperated with me on -- to
23 that extent.

24 THE COURT: Why is it called unofficial?

25 A. It's called unofficial because this is a report that's an

1 interim step before vote history is posted to individual
2 voters' voter record in the statewide system.

3 This report is generated from what we call processing the
4 poll books, which means the counties will click the bar codes
5 of those voters who voted, and it puts that information into a
6 table which holds the information which generates this report.
7 But once the election is closed in SEMS, that information
8 migrates out to the individual voter records.

9 THE COURT: Okay. But it's -- it's unofficial in that
10 it's not yet incorporated into the formal voter records, but it
11 is reliable, question mark, because it is coming straight from
12 the precincts or counties with the bar codes and, therefore,
13 the voter ID numbers?

14 A. It is reliable in that it is a reflection of those voters
15 who voted as marked on the poll books.

16 THE COURT: Okay.

17 MR. SANDERS: That's all I have. Thank you, your
18 Honor.

19 THE COURT: Any other defense questions? No?
20 Mr. Nixon.

21 MR. NIXON: Just a couple of follow-up. Thank you.

22 **REDIRECT EXAMINATION**

23 BY MR. NIXON:

24 Q. Okay. If you could look at D-5, please. How do we know
25 that Mr. James Allison voted?

1 A. I know that Mr. James Allison voted because it is written
2 "voted" in the June 3rd, 2014, election column next to
3 Mr. Allison's name in the Democratic poll book.

4 Q. Who would have written that down? And I don't mean the
5 name of a person but the position of the person.

6 A. Poll worker.

7 Q. And is a poll worker an employee of the State of
8 Mississippi?

9 A. A poll worker is compensated by the county for his or her
10 service on election day.

11 Q. Are they designated by parties to work in specific polls?

12 A. It depends on who's conducting that particular election.

13 Q. In the Democratic primary are they Democratic primary --
14 are they Democratic Party affiliates?

15 A. They are not affiliates of the state party. If the county
16 Democratic Executive Committee actually conducted that
17 election, they would have been chosen by that executive
18 committee. But state law allows county executive committees to
19 contract with election commissions to conduct the election. So
20 unless we had our list here of who conducted which county
21 election, I wouldn't be able to tell you for certain.

22 Q. Okay. Let's talk about chain of custody of D-5.

23 A. Uh-huh (indicating yes).

24 Q. D-5 and D-6 are identical because they are poll books.

25 It's -- and each party gets an identical poll book. Is that

1 right?

2 A. Each precinct receives a poll book for the Republican and
3 Democratic table.

4 Q. Who creates the poll book to give to that precinct?

5 A. The poll book is generated from the Statewide Election
6 Management System by the circuit clerks.

7 Q. Does the Secretary of State have access to the Statewide
8 Election Management System?

9 A. Yes.

10 Q. If the Secretary of State chose, could the Secretary of
11 State create the same poll book?

12 A. Yes.

13 Q. Okay. So in this instance of D-5 and D-6, they're created
14 by the county. Circuit clerk?

15 A. Yes.

16 Q. And then they're delivered to each party?

17 A. No. They're placed -- there is a ballot box and a supply
18 box for every precinct in every county in the state. The poll
19 books are placed in the supply box for the particular precinct
20 in which it represents.

21 Q. How does it get to the precinct?

22 A. It is packed in the supply box by the election -- the
23 officials in charge of the election.

24 Q. And who are those officials?

25 A. Again, it's county election commissions for general and

1 special elections, and it is county executive committees for
2 primary elections unless they have contracted otherwise.

3 Q. Okay. Some counties don't have a Republican Party, and so
4 the state party would then contract with the county election
5 commission to run the Republican primary in that particular
6 county?

7 A. There's a statutory provision which makes -- that allows,
8 yes, a committee to contract for the election commissioners to
9 take that over.

10 Q. Okay. So now we've got the poll books at the precinct.
11 And the Democrats are at one table and the Republicans are at
12 another table. Is that right?

13 A. Yes.

14 Q. So we're having a primary and there are either commission,
15 county election commission people, or party people at each of
16 the two tables. Is that right?

17 A. The poll workers, yes.

18 Q. And they all have access to birth dates?

19 A. Yes.

20 Q. Okay. Why?

21 A. In limited instances, they may make reference to a date of
22 birth in order to assist them in checking the correct person in
23 or in verifying a photo ID.

24 Q. The person sitting at the table, not the voter, indicates
25 "voted."

1 A. By statute, the poll worker writes "voted."

2 Q. Okay. At the end of the night, the polls close. What
3 happens to the poll books?

4 THE COURT: What happens to what?

5 MR. NIXON: The poll books. These (indicating).

6 A. They are put back into their supply box, and they are
7 resealed and sent back to the courthouse where the election
8 materials will come under the direction of the circuit clerk.

9 BY MR. NIXON:

10 Q. Not the election commission.

11 A. It's a joint responsibility. If they are still utilizing
12 certain materials to count and canvass the vote, then it would
13 be the executive committees. If they are complete, then it
14 would be the circuit clerk.

15 Q. Who counts the votes when they're back in the circuit
16 clerk's possession?

17 A. What? The poll books aren't used to count the votes.

18 Q. Okay.

19 A. And we -- you would primarily utilize voting machines,
20 which means the vast majority of our vote totals are downloaded
21 onto cards or zip drives and then downloaded into two different
22 computer systems.

23 THE COURT: What drives?

24 BY MR. NIXON:

25 Q. So election night these are back in the circuit clerk's

1 possession or -- and/or the possession of the election --

2 county election commission. And then what happens to them?

3 A. They stay sealed in a supply box in the circuit clerk's
4 office for as long as the ballot boxes remain there as well.

5 Q. And then when the ballot box is -- so now we've had an
6 election that's been certified. So what happens to the poll
7 books then?

8 A. We still haven't gone past the period of time within which
9 a candidate may file an election contest. Everything stays as
10 it is until that period passes.

11 Q. So in relation to the Republican primary runoff for United
12 States Senate, the challenger, Mr. McDaniel, may still file an
13 election contest?

14 A. He may, yes.

15 Q. If the time period passes where he doesn't file or the
16 election contest is terminated, how much longer are these poll
17 books kept?

18 A. Well, they are kept for at least 22 months, since it's a
19 federal election. And they will be packed, sealed and put into
20 a vault or some other location.

21 Q. The federal law requires these be kept unredacted for 22
22 months?

23 A. They keep all their election materials by state law and
24 federal law for a period of time. Yes.

25 Q. Are these poll books, because it's a federal election,

1 subject to federal retention requirements?

2 A. I would have to look at that.

3 Q. Okay. You indicated that there -- that was the case. I
4 just want to make sure that I understood that specifically.

5 A. Traditionally, the clerks and election commission officials
6 keep their materials for 22 months, all election materials,
7 regardless of what the federal law may say.

8 Q. Is the fact in this case that Mr. Allison voted in the
9 Democratic primary noted in the State's SEMS system?

10 A. If the county has processed their poll book and closed
11 their election, then, yes, it is available on the voter roll.
12 But if they are -- it would depend where they were in their
13 process.

14 Q. So the Secretary of State now has possession of who voted
15 in the Republican primary runoff on June 24th in the SEMS
16 system?

17 A. We may. Yes.

18 Q. And you may produce that by simply running a computer
19 program and putting it on a disk. Right?

20 A. It -- the information becomes part of the voter roll. So
21 it ends up being a request for a voter roll with vote history.

22 Q. Just one last clear-up issue. Overseas or military votes,
23 do they -- do they have more than one ballot in an envelope, or
24 do they come in two different envelopes?

25 THE COURT: What does that mean?

1 MR. NIXON: The runoff is done within three weeks of
2 the primary. And so the military voters or overseas voters are
3 sent a primary, and then they're sent a second ballot that
4 says, *Assume there's a runoff, who would you vote for in the*
5 *runoff?* And so I want to know --

6 THE COURT: Even though they don't know who's in the
7 runoff?

8 MR. NIXON: You don't even know who's in the runoff.
9 *But assuming there's a runoff, who would you vote for?* So --

10 THE COURT: Is that done?

11 A. It's required by UOCAVA for us to meet the 45-day deadline
12 to provide a ranked-choice ballot to them at the same time as
13 their primary ballot.

14 THE COURT: Ranked choice plus the primary. So it is
15 two ballots?

16 A. It's two ballots and they are returned. If they are being
17 returned by mail, they come back in two envelopes.

18 Predominantly, those ballots are returned by e-mail, and they
19 are placed into two separate envelopes by the clerk's office.

20 BY MR. NIXON:

21 Q. On election day -- I just want to make sure I understand
22 this perfectly. On election day the absentee ballots are
23 delivered to the respective precincts. Is that correct?

24 A. The absentee ballots in their envelopes with their
25 applications are put into the right precinct ballot box. So

1 where that voter lives, his or her precinct, if he was voting
2 in person, that's where his or her absentee ballot will go.
3 And it goes into the ballot box with everything else to the
4 precinct.

5 Q. How do they decide which party it goes to? Goes to the
6 Republican Party or the Democratic Party? How is that decision
7 made?

8 A. The voter has to tell their decision at the time they are
9 voting the absentee ballot because the ballots are different.

10 Q. Then the absentee ballot application and the envelope, are
11 they put together and then sent to the respective precincts?

12 A. The absentee ballot is in its envelope, and the sealed
13 absentee ballot in its envelope is usually paper-clipped to the
14 absentee ballot application.

15 Q. And they physically are in the possession of the party
16 primary workers on election day?

17 A. I don't understand your question.

18 Q. Are they? Are they then -- are the primary -- are the
19 absentee ballots sealed in the envelope with the application,
20 then physically delivered to the party primary workers who are
21 working the poll?

22 A. Those materials are in the ballot box with everything else,
23 with the memory cards for the machines, with the blank paper
24 ballots for curbside voters. They're in the ballot box that's
25 sealed and sent to every precinct. And once in the precinct,

1 they are in the possession of the poll workers for each
2 respective election.

3 Q. When are they opened?

4 A. After the polls close.

5 THE COURT: We just went through that. "They" being,
6 frankly, a vague term. I'm assuming you're asking are the
7 ballots, and I went through that one. The boxes are presumably
8 opened when the ballot -- when the precinct worker -- the boxes
9 with the supplies have to be opened at the beginning of the
10 voting day. Right? Or early.

11 A. Certainly. It -- it depends what they have packed in which
12 box. But if blank paper ballots have been packed in the ballot
13 boxes, they will break the seal, pull out what they need,
14 reseal the ballot box. As you pointed out, at the end of the
15 day they would break the seal. They pull out the absentees.
16 They count them. They put them back. They reseal it.

17 BY MR. NIXON:

18 Q. You say "they." Who's "they"? Who's counting them?

19 A. Poll workers.

20 MR. NIXON: That's all I have. Thank you, Judge.

21 THE COURT: Anybody else, defense?

22 MR. SANDERS: No redirect.

23 THE COURT: No? Okay. Thank you very much. We all
24 learned a lot. Before I let you off the stand, may I -- ma'am,
25 is there any other term that we've heard about today that you

1 think maybe you should have been asked about?

2 A. One thing that --

3 THE COURT: You better get back on the stand. I hate
4 to do that to you, but...

5 (COMPLIED WITH REQUEST)

6 THE COURT: I hate to let you go because you know a
7 lot, and, frankly, you're filling in the gaps of our knowledge.
8 Go ahead.

9 A. The one thing I did mention to Mr. Pizzetta earlier is some
10 confusion about signing the poll books. And I just want to be
11 clear that the voter does not sign the poll book at all.
12 There's a separate book for voter signature, and it's called a
13 receipt book.

14 THE COURT: Okay.

15 A. And that's all -- that's all it is.

16 THE COURT: Other than the receipt book, what other
17 information is --

18 A. That is all it is. It's a sign-in sheet. But I did want
19 to just clarify that the voter does not sign the poll book. By
20 law, the only thing that is written in a poll book is the word
21 "voted" by the poll worker.

22 THE COURT: Is what?

23 A. Is the word "voted" by the poll worker in the appropriate
24 election column.

25 THE COURT: By the Democratic --

1 A. By the poll workers. So for whichever party primary a poll
2 worker is working for, they're the only ones that would write
3 the word "voted" in the poll book.

4 THE COURT: And the lists -- in most counties,
5 typically, is there more than one poll worker signing in voters
6 on a given day?

7 A. It depends, of course, on the size of the precincts in the
8 counties. But, yes, we do see our bigger precincts with poll
9 books that are split alphabetically, A through L, M through Z.
10 So --

11 THE COURT: That anticipated my question. No one --
12 no two poll workers, then, have the same list for the
13 Democratic side or the Republican side? In other words, I know
14 the list in its total is the same. It goes to the Republican
15 table and the Democratic table. But once it gets to the table
16 of a particular party, is there one list?

17 A. Yes.

18 THE COURT: And then it's broken into segments,
19 depending on the number of poll workers and perceived need for
20 different people to check in?

21 A. It definitely may be broken into sections, yes.

22 THE COURT: Okay. And then at the end of the polling
23 day, the three or X number of sections are collated and
24 combined back to the full poll list?

25 A. It would depend how the election officials prepared for

1 that election. They may have broken -- broken down the one
2 poll book already into two binders.

3 THE COURT: Oh, because it's so big. Okay. I get
4 you.

5 A. Right. So they traditionally break it out ahead of time
6 and put them in folders or binders for ease of use.

7 THE COURT: Okay. But the point is that at the end of
8 the polling day, those poll books are collected and put back in
9 the supply box?

10 A. Yes, ma'am.

11 THE COURT: And then they go to the county courthouse
12 clerk?

13 A. Uh-huh (indicating yes).

14 THE COURT: And they are held in -- other sealed --
15 part of the sealed --

16 A. The poll books usually are not kept sealed, as they do
17 often receive public records requests for the poll books. So
18 they are kept outside of the sealed box.

19 THE COURT: Okay.

20 A. But they remain with the supplies and the election
21 materials.

22 THE COURT: Okay. And when a public information
23 request comes, is that under state law or federal law?

24 A. It is presumably always under state law.

25 THE COURT: And in that case you redact information

1 required to be redacted under state law, such as date of birth?

2 A. Just the date of birth.

3 THE COURT: Just the date of birth. Okay. We've
4 covered voter registration applications. Are those exactly
5 what they appear to be? In other words, a voter fills out an
6 application to register to vote?

7 A. Yes.

8 THE COURT: In writing, they put in a lot of -- all
9 the personal information that --

10 A. They -- they do put some personal information, such as the
11 last four of their Social, their date of birth, their name,
12 their address, their driver's license number. And then there's
13 a block that requires them to, under penalty of perjury, attest
14 to the fact they have not been convicted of any of the
15 disenfranchising crimes.

16 THE COURT: And then voter rolls you've talked about.
17 Voter poll books you've talked about. Federal postcard
18 applications you've mentioned. Who keeps those? I think you
19 said it, but I don't --

20 A. They're -- they're kept -- they have -- they can have two
21 purposes. If they were -- if a federal postcard was sent for
22 registration purposes, it's, of course, kept as a registration
23 application, but we usually see it as a simultaneous request as
24 registration application and absentee ballot request.

25 So it's scanned into SEMS, but it still stays with the

1 absentee ballot in its envelope for processing.

2 THE COURT: I've not seen one of those, but can the
3 defense supply us with a copy of that form or an exemplar?

4 A. There's a blank form online.

5 THE COURT: Okay. So that will be easy. I'm not
6 supposed to go online to search this out.

7 MR. PIZZETTA: We'll provide it, your Honor.

8 THE COURT: Thank you. Okay. Then the absentee
9 voting envelopes, those are the envelopes that the absentee
10 voter ballots are received in? Sent in?

11 A. They're put in. The absentee ballots are put in an
12 envelope, yes.

13 THE COURT: Oh, to go back -- to go out to the voter,
14 the requester?

15 A. Either for it to be secured before it goes to the precinct;
16 or if they're mailing it back, it could be a mailed envelope as
17 well.

18 THE COURT: Okay. But the point is, the voter doesn't
19 go to their file cabinet and pull out an envelope. It's
20 something supplied by the county?

21 A. Correct.

22 THE COURT: Sent out originally or provided by the
23 county and then returned by the voter. Correct?

24 A. Right.

25 THE COURT: Okay. And that's a term of art, and I

1 could use a sample of that.

2 A. Those vary by county, your Honor. Every county is
3 responsible for its own absentee ballot envelopes. And you'll
4 see at least three different variations in probably every
5 county.

6 THE COURT: Oh, great. Okay. Is there a minimum
7 amount of information required?

8 A. There's the statutory information, which is the voter's
9 signature with the oath and the witness and the voter
10 assistance. And they all comply with statute. You just see so
11 many different forms. And we can get you copies, but you just
12 would need to realize that it's going to change by county.

13 THE COURT: I understand. I don't really want all the
14 variations, but maybe two or three that are typical that
15 have -- that are easy to read.

16 A. Okay.

17 THE COURT: The absentee ballots, I'd like a sample of
18 that.

19 A. It's just a scannable ballot. We can download one for you,
20 but it's the same blank ballot that's used on election day for
21 emergency purposes as well.

22 THE COURT: That's fine. That's fine. That will be
23 helpful. The record needs it. Remember, I'm not a
24 Mississippian, but, more importantly, the record needs it. I
25 think I've got the -- I'm not sure I have voter rolls.

1 A. You do not have a voter roll.

2 THE COURT: So we need a copy of that. Just a page.
3 Redacted is fine. We've had testimony about it. I know what
4 it is, but I'd like a sample. Okay. Anybody have any other
5 samples?

6 MR. WALLACE: One technical question, your Honor.

7 **CROSS-EXAMINATION**

8 BY MR. WALLACE:

9 Q. You mentioned that you keep -- or that the county clerks
10 keep certain documents for 22 months. Do you know what federal
11 statute requires that?

12 A. Not off the top of my head.

13 Q. Okay. You don't know whether it's the Voter Registration
14 Act or some other statute?

15 A. I'd have to look and double check.

16 Q. Thank you.

17 MR. WALLACE: Thank you, your Honor.

18 THE COURT: Okay. We will ask you supply that.

19 MR. NIXON: I have one short follow-up, if I may.

20 THE COURT: Okay.

21 **FURTHER DIRECT EXAMINATION**

22 BY MR. NIXON:

23 Q. We really didn't talk about a runoff. We talked about the
24 primary and each of these (indicating) stamped. In the runoff
25 do they -- do the parties then switch books -- the poll books

1 so that they know who voted in the other political party's
2 primary?

3 A. That is not the recommended or trained proper procedure.

4 Q. What is the recommended or trained proper procedure?

5 A. What has been trained or taught is to actually print a
6 VR-28 report which lists all particular voters who voted in
7 that election and to provide that list to the poll workers.

8 Q. Who recommends creating the VR-28?

9 A. Our office trains the election commissioners and executive
10 committees, and then they pass it along to their poll workers.

11 Q. Okay. So you instruct the counties to do that. Do the
12 counties -- are they required by Mississippi statute to do
13 that?

14 A. No. There is no procedure set by statute.

15 Q. Okay. Some counties may create a VR-28 and some counties
16 just may switch poll books?

17 A. They may.

18 THE COURT: Switch what?

19 MR. NIXON: They switch the books. The Democrats
20 voted here and the Republicans voted here, on the right and the
21 left, during the primary. So in order to know who voted in the
22 other person's primary, the parties switch books. So when you
23 vote in the Republican Party primary runoff --

24 THE COURT: Oh, the Republicans can check --

25 MR. NIXON: -- you're looking at the Democrat polling

1 book to see if you voted in the Democrat Party.

2 THE COURT: What's wrong with doing that?

3 MR. NIXON: It's -- I don't know. I just was
4 asking --

5 THE COURT: Sounds like a great idea.

6 MR. NIXON: Yeah, I thought so too. It's just -- some
7 counties do it. I just wanted to make sure we understood the
8 process.

9 THE COURT: Okay. But I think your point is that
10 there's no new polling record or anything.

11 A. There's no new poll book run. And we only had a Democratic
12 runoff in a few counties, so some Republicans were -- had the
13 benefit of the Democratic poll book because it wasn't in use.

14 THE COURT: Thank you.

15 MR. NIXON: Thank you.

16 THE COURT: Anything else? You are finally --

17 MR. SLAY: One.

18 THE COURT: Oh, oh, oh.

19 MR. SLAY: And this may be totally off base.

20 **CROSS-EXAMINATION**

21 BY MR. SLAY:

22 Q. Kim, Craig Slay, Rankin County. We've talked.

23 A. Yeah. Hey, Craig.

24 Q. Good to see you. What is your understanding of -- under
25 Mississippi law, if you know, what is the -- what is the

1 person, office, entity or otherwise that is responsible for
2 being the repository, the holder, the keeper of election
3 materials, and my specific question is the poll books, since
4 that is the -- seems to be the issue before us? Who, by
5 statute, is defined as the person responsible for, ultimately,
6 the poll book?

7 A. It's going to be the circuit clerk.

8 Q. The circuit clerk. Thank you.

9 THE COURT: Anybody else? Thank you very, very much.
10 Appreciate your information. Mr. Nixon, I know I promised
11 lunch at about 1, and it is about 1, but I was wondering if you
12 had a short witness.

13 MR. NIXON: We do. I think we'd like to call Phil
14 Harding.

15 THE COURT: Okay. Thank you. Let's do that.

16 MR. HOGUE: Your Honor, I'm Eades Hogue.

17 THE COURT: Okay. You're going to do the questioning?

18 MR. HOGUE: If you don't mind.

19 THE COURT: No. It's fine.

20 MR. HOGUE: I'll try to be fast.

21 THE COURT: Okay.

22 MR. HOGUE: I do have a drawl, but I'll --

23 THE COURT: Your drawl is okay.

24 MR. HOGUE: All right.

25 THE COURT: You're in good company here, I can tell.

1 Sir, would you state your name? No, first stand up because I'm
2 going to swear you in.

3 (WITNESS SWORN)

4 THE COURT: Would you please be seated, pull yourself
5 close to the mic, and then state and spell your whole name for
6 the record.

7 THE WITNESS: Okay. My name is Phillip Clair Harding,
8 III. That's P-H-I-L-L-I-P, middle name, C-L-A-I-R, last name,
9 H-A-R-D-I-N-G.

10 THE COURT: All right. Thank you. You may proceed.

11 **PHILLIP C. HARDING,**

12 having first been duly sworn, testified as follows:

13 **DIRECT EXAMINATION**

14 BY MR. HOGUE:

15 Q. All right. Mr. Harding, where do you reside?

16 A. I reside in Biloxi, Mississippi.

17 Q. Would you tell the court your occupation.

18 A. I'm a retired Air Force officer.

19 Q. All right. And briefly tell his Honor the nature of your
20 service.

21 A. I served 30 years in the U.S. Air Force, retiring as a full
22 colonel. I began my career as a nuclear missile launch officer
23 and then proceeded later on in my career to serve as a
24 logistics readiness officer.

25 During that time I commanded two separate squadrons, both

1 in Korea, was a deputy group commander and finished my career
2 at Keesler Air Force Base, having spent my last year on active
3 duty deployed to Iraq.

4 Q. Okay. Now, what county in Mississippi do you presently
5 reside?

6 A. Harrison County, sir.

7 Q. And are you a registered Mississippi voter?

8 A. Yes, I am.

9 Q. Approximately when did you register to vote here?

10 A. I registered end of April, beginning of May.

11 Q. Of what year, sir?

12 A. Of 2014.

13 Q. All right. Now, calling your attention to the Republican
14 primary and primary runoff elections, did you have an occasion
15 to volunteer in coordinating or operating a part of that
16 election process?

17 A. Yes, I did.

18 MR. SANDERS: Your Honor, if he's going to testify
19 about what happened in Harrison County, we object. Harrison
20 County is not one of the nine county defendants here and,
21 frankly, has no relevance to this proceeding.

22 THE COURT: Okay. Where are all the microphones on
23 the defense side? Let's put it in the middle. Okay. But I
24 think we did hear you. So what's your answer to that?

25 MR. HOGUE: Well, my answer to that is, we are going

1 to demonstrate the destruction of some absentee ballot
2 materials.

3 THE COURT: It's not relevant, since no one from
4 Harrison County was here, and I haven't made a ruling on that,
5 and you didn't sue them in the first place. I don't understand
6 why that is relevant.

7 MR. HOGUE: Well, it would be relevant to show that
8 there's a question as to the validity of the election. What
9 this man is going to testify to, ma'am, is about observing the
10 destruction of absentee ballot materials.

11 THE COURT: When we get to that part of the case, if
12 we get there and we need a hearing, I welcome this testimony.
13 Also, when you sue Harrison County for something that they have
14 done that you believe is illegal, I will welcome the testimony.

15 But right now, you have sued eight county -- nine
16 county officers and the State and the Republican Party, and we
17 have a lot of people here that want to be heard on issues that
18 involve the National Voter Registration Act. This alleged
19 destruction of something is not part of that case. Objection
20 sustained. Witness may not testify. I'm sorry.

21 MR. HOGUE: Well, I'm very sorry, too. I would add
22 one thing, your Honor, and I'm going to sit down. He's also
23 prepared to testify and tell you about additional inspection of
24 Harrison County records that the circuit clerk's office where
25 he --

1 THE COURT: If you want to lay --

2 MR. HOGUE: -- where he found that missing --

3 THE COURT: Excuse me, sir. When I'm speaking, you
4 are not.

5 MR. HOGUE: Thank you.

6 THE COURT: If you would like to lay a foundation for
7 that line of questioning, you're welcome to do that.

8 MR. HOGUE: All right.

9 BY MR. HOGUE:

10 Q. Now, following the actual primary runoff election, did you
11 have an occasion to go back to the Harrison County Circuit
12 Clerk's office for the purpose of trying to review materials
13 involving absentee votes?

14 A. Yes, I did.

15 Q. All right. Tell Her Honor what you did.

16 MR. SANDERS: Your Honor, we have the same objection,
17 relevancy.

18 THE COURT: No, I'm going to hear this one.

19 A. Yes. I was -- was working to review the election materials
20 as a certified -- or a credentialed volunteer for the McDaniel
21 campaign. We requested the absentee ballot materials, the
22 envelopes and the applications. They were initially not
23 provided.

24 We asked -- asked a second time for them. A portion of
25 those materials were provided, involving about 20 of the

1 precincts out of 60 in Harrison County. We inventoried those
2 and found that there were still approximately 40 counties -- or
3 40 precincts' worth of materials that were missing, asked again
4 and were provided another approximately 20 precincts --

5 THE COURT: What day did you do that?

6 A. What's that?

7 THE COURT: What day did you do this --

8 A. This is beginning the 7th of July through the -- through
9 last Friday, the 18th.

10 THE COURT: 7th through the 18th of July?

11 A. Yes. Yes. We initially -- initially went to ask for these
12 on the 7th. The first -- first increment --

13 THE COURT: Did you go to every precinct and ask or
14 how did you --

15 A. No, we asked the circuit clerk.

16 THE COURT: Okay.

17 A. The circuit clerk went to the election commission and found
18 a number of orange absentee ballot bags with materials, and
19 some empty, brought them over. That was the first increment
20 that had about 20 precincts' worth of material.

21 THE COURT: You were asking only for absentee ballots?

22 A. We already had access to the ballot bags that had the voted
23 ballots in them at that time.

24 THE COURT: Okay. How close was the election in
25 Harrison County?

1 A. It was --

2 THE COURT: What was the differential?

3 A. It was over 3,000 votes difference.

4 THE COURT: Okay. So you already had the voter
5 registration or the voter rolls or what?

6 A. At that point we did not. We had -- we had seen a few of
7 those poll books that we had -- had requested and paid the
8 county clerk to redact. But by the time that we were
9 officially credentialed by the McDaniel campaign to do that, we
10 did not have access at that point because the campaign had not
11 paid for the redaction of the remaining poll books at that
12 point.

13 THE COURT: Okay.

14 A. That was the subject of another mandamus case.

15 THE COURT: That's the state case.

16 A. Yes.

17 THE COURT: Harrison.

18 A. Yes. Yes, it was.

19 THE COURT: Okay. So what did you -- what did you
20 actually ask for?

21 A. We asked for the absentee ballot materials, the envelopes,
22 the opened envelopes, and the applications.

23 THE COURT: Okay.

24 MR. HOGUE: May I proceed?

25 THE COURT: And you got 20 precincts --

1 A. We initially got 20 precincts on the afternoon of the 9th.
2 We asked -- we indicated that that was not the entire supply of
3 those materials. We got another increment of those on the
4 morning of the 14th of July. And I asked again on the 17th
5 with a specific list of the precincts that we were still
6 missing. And I received a formal letter back from the circuit
7 clerk indicating that I would need to ask the --

8 MR. WALLACE: Object --

9 A. -- Republican --

10 MR. WALLACE: -- to the letter, your Honor.

11 A. -- committee.

12 MR. WALLACE: That would be --

13 THE COURT: All right. Well --

14 MR. HOGUE: I would like to --

15 THE COURT: -- I don't know that it was a letter. He
16 just told me that he had a response. But the point is,
17 overruled. You got back a response that said no to the
18 balance, but you got about 40 of the 60? Is that what it was?

19 A. Yes.

20 THE COURT: That's your punch line?

21 A. Yes.

22 THE COURT: Okay. Great.

23 MR. HOGUE: Ma'am, it might -- you're the boss. It
24 might elucidate this whole issue if I offer to introduce what
25 should be in your bench book Exhibit 9, ma'am. It's a two-page

1 document, number 9.

2 THE COURT: I don't have a bench book. If you could
3 be more specific. I've got numerous things --

4 MR. HOGUE: All right. Exhibit book. Forgive me.

5 THE COURT: 9?

6 MR. HOGUE: Yes, ma'am.

7 THE COURT: I don't have an exhibit book either. I
8 have --

9 MR. HOGUE: Well, let me show you this.

10 (DOCUMENT TENDERED TO STAFF ATTORNEY)

11 THE COURT: I have the --

12 MR. HOGUE: That's an oversight.

13 THE COURT: I have the --

14 MR. TEEUWISSEN: Excuse me. Before it goes to the
15 court, could we see it?

16 THE COURT: Yeah. I don't know what he's doing. I'm
17 sorry. I really --

18 MR. HOGUE: You have it. Every one of you have it.

19 THE COURT: My clerk will give it back. Okay.

20 MR. HOGUE: They already have it. Every one of you
21 have it.

22 THE COURT: Okay. Mr. -- Mr. Hogue.

23 MR. HOGUE: Yes, ma'am.

24 THE COURT: I'm handing back the document that you
25 handed me. Show the defense counsel, please --

1 MR. HOGUE: Yes, ma'am.

2 THE COURT: -- the document.

3 MR. HOGUE: Who does not have it?

4 (COMPLIED WITH REQUEST)

5 THE COURT: Okay. Now it's clear what he's showing
6 me. Now I'll take it -- let me -- let me --

7 MR. HOGUE: Yes, ma'am. Let me hand it back.

8 THE COURT: I have received -- and if you're referring
9 to the book that has the witness list and bench memos and then
10 your exhibit list, and behind the exhibit list is a few
11 documents?

12 MR. HOGUE: Yes, ma'am.

13 THE COURT: Is that what you're referring to?

14 MR. HOGUE: And you'll be glad to know it's the very
15 last exhibit.

16 THE COURT: Okay.

17 MR. HOGUE: Number 9.

18 THE COURT: This is no problem.

19 MR. HOGUE: All right. Now --

20 THE COURT: The number of exhibits is not my --

21 MR. HOGUE: Yes, ma'am. Would you permit me to show
22 Exhibit 9 to the witness?

23 THE COURT: Please do.

24 BY MR. HOGUE:

25 Q. Now, Colonel, first of all, I want to refer you to the

1 second page of Exhibit 9. Can you identify that set of notes?

2 A. Yes, indeed. This is the -- this is the set of notes that
3 I hand delivered to a representative of the county clerk's
4 office asking for those additional precincts' absentee ballot
5 applications and envelopes.

6 Q. All right. So sum up, what is the essence of what these
7 notes tell us today?

8 A. Gives us a list of the precincts that at that point on the
9 17th were still missing applications and envelopes for the
10 precincts numbered on the left and then the precinct name on
11 the right-hand column there.

12 Q. All right, sir. Now, once you compiled this list, based on
13 your inspection, did you indeed turn this over to the circuit
14 clerk?

15 A. Yes, I did.

16 Q. For what purpose?

17 A. Requesting that they secure those and provide those --
18 provide those to us for review.

19 Q. All right, sir. Now, did you hear back from the circuit
20 clerk?

21 A. Yes, I did.

22 Q. All right. I want you to turn to the first page of
23 Exhibit 9. Is that the communication you got back from the
24 Harrison County Circuit Clerk's Office?

25 A. Yes, it is.

1 Q. All right. Essentially --

2 MR. WALLACE: At this point, your Honor, I have no
3 objection to page two, but page one is hearsay about what
4 happened --

5 THE COURT: Okay.

6 MR. WALLACE: -- to those documents 17 days after the
7 election.

8 MR. HOGUE: May I be heard?

9 THE COURT: No. The letter is received for a limited
10 purpose, and the limited purpose is, this is what the witness
11 received. It is not being received for the truth of the matter
12 asserted as to the Republican Party.

13 MR. WALLACE: Thank you, ma'am.

14 THE COURT: For the record, the letter is from Gail
15 Parker, Circuit Clerk of Harrison County. And it is written to
16 Phil Harding and signed by Harrison County Circuit Clerk's
17 Office, Gail Parker, not the Republican Party. So it's a
18 limited receipt. It is received in that regard.

19 (EXHIBIT P-9 MARKED)

20 MR. HOGUE: Thank you, ma'am.

21 BY MR. HOGUE:

22 Q. Now, as a result of receiving that letter, did you then
23 terminate your attempt to gather these records that's listed
24 here at the clerk's office?

25 A. Yes, I did. I turned this letter over to the

1 representatives of the McDaniel -- Friends of Chris McDaniel
2 Campaign for them to engage further if they so chose.

3 Q. All right.

4 MR. HOGUE: Your Honor, in view of your earlier
5 rulings, give me one moment to consult co-counsel.

6 THE COURT: All right.

7 (COUNSEL CONFERRED)

8 MR. HOGUE: Your Honor, we tender the witness.

9 THE COURT: Okay. Thank you. Defense, who wants to
10 question?

11 **CROSS-EXAMINATION**

12 BY MR. PIZZETTA:

13 Q. Mr. Harding, you requested these documents from the county
14 on behalf of the McDaniel campaign?

15 A. Yes.

16 Q. You're not a plaintiff in this lawsuit. Correct?

17 A. No.

18 Q. You didn't ask for these documents on behalf of True the
19 Vote. Correct?

20 A. No.

21 Q. McDaniel campaign is not a party to this litigation.
22 Correct?

23 A. Not to my knowledge.

24 Q. You're aware that McDaniel campaign sued Harrison County
25 over access to documents and lost in the Mississippi Supreme

1 Court. Correct?

2 A. Yes.

3 Q. When you were asking on behalf of the McDaniel campaign,
4 you were doing this as part of the state law ballot box
5 examination a candidate undertakes. Correct?

6 A. Yes.

7 Q. You were his designee.

8 A. Yes.

9 Q. You weren't down there asking for documents under NVRA.
10 Correct?

11 A. No.

12 MR. PIZZETTA: Thank you, your Honor.

13 THE COURT: Anything further?

14 MR. WALLACE: Your Honor, because your Honor ruled
15 that the Gail Parker letter was received not for the purpose of
16 the truth of its contents, we have no questions.

17 THE COURT: Okay. With respect to the truth of its
18 contents regarding the Republican Party of Mississippi.

19 MR. WALLACE: Yes, ma'am.

20 THE COURT: I mean, I think she sent this letter
21 regarding declining to turn over additional records in that she
22 said she had no involvement in the sealing of ballot bags,
23 et cetera, and there's a paragraph about the county.

24 MR. WALLACE: Yes, ma'am.

25 THE COURT: And I am receiving that as -- for the

1 truth to the extent that's--

2 MR. WALLACE: Certainly for what she did, it's
3 receivable.

4 THE COURT: Thank you. Okay. Anything further for
5 this witness?

6 MR. NIXON: No.

7 MR. HOGUE: No, ma'am.

8 THE COURT: No? Thank you so very much. You're
9 excused. And thank you for your service.

10 Okay. Lunchtime. It's 1:21. Let's be back here --
11 can I shave a little bit off your lunch? Let's say 2:15
12 prompt. Thank you all. You're excused.

13 (NOON RECESS)

14 THE COURT: Please be seated. Good afternoon. Do we
15 have everybody we need? Great. Mr. Nixon, do you have any
16 other witnesses?

17 MR. NIXON: Yes.

18 THE COURT: Okay.

19 MR. NIXON: Ms. McDonald is going to present the next
20 couple of witnesses.

21 THE COURT: Great. Thank you.

22 MS. McDANALD: Plaintiffs would like to call Roy
23 Nicholson, who is a plaintiff in this suit.

24 (WITNESS SWORN)

25 THE COURT: Please be seated. And would you state,

1 please, and spell your full name for the record.

2 THE WITNESS: My name is Roy Nicholson, R-O-Y,
3 N-I-C-H-O-L-S-O-N. Middle name is Woodrow, W-O-O-D-R-O-W, and
4 I am a junior.

5 THE COURT: Okay.

6 THE WITNESS: Do you have all those pieces together?

7 THE COURT: I think I've got it. Roy Woodrow
8 Nicholson, Jr.

9 THE WITNESS: Yeah, Roy Woodrow Nicholson, Jr.

10 THE COURT: Okay. Thank you. You may proceed.

11 MS. McDANALD: Thank you.

12 **ROY W. NICHOLSON, JR.,**

13 having first been duly sworn, testified as follows:

14 **DIRECT EXAMINATION**

15 BY MS. McDANALD:

16 Q. Roy, are you a resident in Mississippi?

17 A. Yes, I am.

18 Q. And how long have you lived here?

19 A. 14 years now.

20 Q. Are you a registered voter?

21 A. Yes, I am.

22 Q. Have you voted in any elections recently?

23 A. Yeah. The most recent was in the Republican primary for
24 the U.S. Senate, both primary and the runoff.

25 Q. Have you done anything to follow up on the election

1 results?

2 A. Yes, I did. After the runoff vote we had heard allegations
3 of problems with what I believe one of the defense attorneys
4 called the crossover vote, or we called it double-voting, where
5 a person voted in the Democrat primary and then voted in the
6 Republican runoff.

7 We had heard allegations, and I wanted to see in my home
8 county of Rankin if any of that had occurred. And so I went
9 down to the circuit court clerk's office, Ms. Rebecca Boyd, and
10 asked, along with three other people with me, if we could view
11 those -- the poll book.

12 Q. What were the names of the three other people with you?

13 A. Sandra Inman is one, and it was also Larry and Elva
14 Eubanks.

15 Q. And you said that you requested to review the poll book.
16 What is the poll book?

17 A. The poll book is a copy of the voter registration that's
18 given to the poll workers in which they verify that somebody is
19 eligible to vote in that precinct, and they mark them as having
20 voted in the election of that day.

21 Q. So how would the poll book specifically help you identify
22 whether or not there was double voting?

23 A. Well, the poll books, under standard procedure that is used
24 in most places, the two parties will have swapped their poll
25 books from the primary. And in doing that each party can

1 verify that the people that are coming to vote in the runoff
2 had not previously voted in the other party's primary.

3 And so that -- looking at that book would tell us if people
4 had voted, because they would have already been marked as
5 having voted in the June 3rd Democrat and then showed up on the
6 Republican 24th runoff.

7 Q. And were you able to gain access to the poll books?

8 A. No, we were not. We were denied access by the circuit
9 court -- clerk. Pardon me.

10 Q. Were you told that if you ever gained access you would be
11 permitted to review the birth dates?

12 A. What we were told when we were there and requested to see
13 these from the circuit court clerk was she had an e-mail from
14 the Secretary of State ordering her to not allow anyone to view
15 unredacted original poll books because of the birth date or the
16 last four of the Social Security number. She also cited the
17 county attorney had instructed her that those poll books were
18 not subject to public information requests because they were,
19 in fact, county property.

20 Q. Okay. Did you ever seek the poll books from any other
21 counties?

22 A. Yes. A day or two before I had visited in Rankin County
23 while those books were being investigated, and I saw quite a
24 few cases of people that had double voted.

25 Q. Okay. And what specifically were those cases?

1 THE COURT: No, not relevant.

2 MS. McDANALD: We would argue that the evidence is
3 relevant, in fact, because the Secretary of State was up on the
4 bench talking about the implementation of practices of voting
5 statewide. There's a statewide procedure. This would be
6 contradictory evidence specific to that testimony, that the
7 statewide procedure is not being followed county to county.

8 THE COURT: What does that have to do with the
9 preliminary injunction hearing we're here on today, which is
10 the issue of whether people are allowed to see the various
11 documents you want, redacted or unredacted?

12 MS. McDANALD: It has everything to do --

13 THE COURT: Double voting. My point is that I just
14 don't get it on the double voting.

15 MS. McDANALD: Absolutely. The double voting is
16 specifically related to this hearing because the poll books are
17 how we see whether double voting did or did not occur. And how
18 do we see that? What he just said. It shows whether or not a
19 person is eligible to vote in a runoff election.

20 You review the poll book. The poll book says whether
21 or not somebody already voted in the primary. Therefore, if
22 you already voted in the primary and you are a Democrat voting
23 a primary, you cannot go and vote in the Republican runoff.
24 You are not eligible.

25 And that goes to everything about this primary -- I'm

1 sorry -- this hearing, because the NVRA says we get to see, by
2 public disclosure, every document -- and it is broad
3 language -- that relates to the eligibility of voters. How do
4 we know whether or not somebody is eligible to vote?

5 THE COURT: Eligibility of voter lists. The statute
6 refers to voter lists, accuracy and currency of voter lists.
7 So my question is -- and your complaint is that the redactions
8 are inappropriate. If this gentleman had asked for the voter
9 list -- or the poll book redacted, apparently, he would have
10 gotten it.

11 MS. McDANALD: He would have gotten it. And,
12 essentially, the Fourth Circuit --

13 THE COURT: The accuracy of the voter list is a -- is
14 the issue we have here, not whether there was double voting.
15 So if he wanted to see the voter list --

16 MS. McDANALD: Okay.

17 THE COURT: -- he could have seen it without the birth
18 dates. And then if separate events, separate concern wanted to
19 check because there was double voting, then he could have
20 said -- gone through that process.

21 But as I understand it, this hearing is not about
22 double voting. It's about the accuracy of the voter lists and
23 currency of them. So I don't see the need for detailed
24 evidence about double voting. He's already said he saw,
25 quote -- and I've allowed it in -- quite a few cases, whatever

1 that means. So I'm trying to keep us focused.

2 MS. McDANALD: Sure.

3 THE COURT: Okay?

4 MS. McDANALD: Understood.

5 THE COURT: And, truthfully, whether the statute does
6 or doesn't require birth dates is one thing that it does
7 require, and I don't see a dispute among these people about
8 whether or not the voter lists from which the poll lists are
9 made were prevented or should have been or could have been
10 prevented from being turned over.

11 The issue is the detail of the birth dates. And this
12 witness can't -- I mean, he's -- you've established that he
13 asked for it and that he couldn't get it because of the birth
14 dates.

15 MS. McDANALD: That's right.

16 THE COURT: If you want to add some other facts about
17 what he could or couldn't get, you may.

18 MS. McDANALD: I apologize. I thought the Secretary
19 of State was trying to argue that the poll books weren't
20 covered by the NVRA.

21 THE COURT: They did argue that, but that's a separate
22 issue, and we already understand what the issue is.

23 MS. McDANALD: Okay.

24 THE COURT: But the insistence of double voting is not
25 my subject today. That's all I'm trying to communicate.

1 A. May I add a comment?

2 THE COURT: No.

3 A. Okay.

4 THE COURT: If she wants to ask -- no offense. I'm
5 sorry.

6 A. That's all right.

7 THE COURT: Go ahead.

8 BY MS. McDANALD:

9 Q. To keep it tight and narrow then, we will just -- I would
10 just ask have you ever received any poll books, complete or
11 incomplete, birth dates or no birth dates, in response to your
12 request?

13 A. I did not from Rankin County. In Hinds County we were
14 allowed to view unredacted original poll books. And the reason
15 that seemed important at the time had to do with the currency
16 of the voter registration list in that if they had previously
17 voted in the Democratic primary, they are not an eligible voter
18 in the Republican runoff. And so in order to protect the
19 integrity of the election, I was concerned about that issue.

20 Q. Thank you.

21 MS. McDANALD: No further questions. Pass the
22 witness.

23 THE COURT: Did you actually ask to see redacted poll
24 books from Rankin County? When they said -- when they said no
25 on unredacted, did you actually ask to see redacted?

1 A. There were two -- two requests that were discussed. One
2 was the original, just being able to view, just view, not make
3 copies or anything, but view the unredacted copies there. When
4 I was told that was impossible, I asked what was the procedure;
5 I would like to have a redacted copy.

6 And at that time I was told it would cost me 50 cents a
7 page, which would have been something in the neighborhood of
8 \$14,000 and several days for them to have prepared those. And
9 so there was -- there was no way to make a quick review. It
10 was going to take several days.

11 THE COURT: Well, if it was \$14,000, at 50 cents a
12 page, that's thousands of pages.

13 A. Yes, ma'am.

14 THE COURT: And a quick review --

15 A. It was like 28 --

16 THE COURT: I don't follow that. How would you do a
17 quick review?

18 A. Because the poll books -- there's I think 87,000 registered
19 voters in Rankin County.

20 THE COURT: 87,000 --

21 A. And the poll book has all of those 87,000.

22 THE COURT: Right. Right.

23 A. Yes. And so there's like 20 per page, and that works out
24 to, roughly, what, 20 something -- 20 --

25 THE COURT: So it was --

1 A. -- 14,000 pages --

2 THE COURT: -- the price. It was --

3 A. Yes.

4 THE COURT: -- the price that was the problem?

5 A. The price was very prohibitive. And at the time we were --
6 working on the information that we had just as laymen, we
7 thought there was greater urgency to look at them sooner.
8 There had been allegations floating around about tampering,
9 about all kinds of issues. And so the quicker we get in, the
10 better.

11 THE COURT: Okay. Thank you. Cross.

12 MR. SLAY: Your Honor, this is Craig Slay, Rankin
13 County election commission. Just a couple of quick questions,
14 if I may.

15 **CROSS-EXAMINATION**

16 BY MR. SLAY:

17 Q. Mr. Nicholson, you mentioned that you went to see Ms. Becky
18 Boyd, the circuit clerk for Rankin County. Is that correct?

19 A. Yes, we did.

20 Q. What day did you do that?

21 A. That was June 27th.

22 Q. I'm sorry?

23 A. June 27th.

24 Q. June 27th. All right. So three days after the runoff
25 election.

1 A. Yes.

2 Q. June 27th. And you said that two other individuals were
3 with you --

4 A. Three.

5 Q. Three other individuals were with you at the time? Can you
6 elucidate on exactly what you asked to see?

7 A. Basically -- best I recall, I said, Ms. Boyd, we would like
8 to review the poll books to investigate to see if there was
9 double voting.

10 Q. Right. Poll books. Did you identify whether you were with
11 any organization --

12 A. No.

13 Q. -- in conducting --

14 A. No, sir.

15 Q. -- the research?

16 A. I was -- I was there on my own behalf as a citizen.

17 Q. Okay. What relationship, if any, do you have with the
18 other plaintiff in the case, True the Vote?

19 A. A couple that I think are plaintiffs I have known in the
20 past. Donna Knezevich down around Poplarville had called me
21 and said that True the Vote was interested in helping us gain
22 access to these materials and would I be interested in being a
23 part of that. And so we had a conference call. I spoke with
24 some of their attorneys and decided that, yes, I was willing to
25 be a part of that suit.

1 Q. Okay. And so you were asked to be a plaintiff in this suit
2 by True the Vote?

3 A. I would not say that they asked. No, sir. I was made
4 aware that they were preparing to bring a suit on behalf of us
5 and offered to be a part of that.

6 Q. Do you have separate legal counsel in this case?

7 A. No, I do not.

8 Q. You don't have an independent attorney --

9 A. No.

10 Q. -- representing you?

11 A. No.

12 Q. Okay. So you're relying on counsel seated at the
13 plaintiffs table here --

14 A. Yes.

15 Q. -- to provide representation to you as a plaintiff in this
16 case?

17 A. Yes.

18 Q. All right. Are you paying plaintiffs' counsel for their
19 services --

20 MS. McDANALD: I'd like to object to this line of
21 questioning.

22 BY MR. SLAY:

23 Q. -- personally?

24 THE COURT: Sustained.

25 BY MR. SLAY:

1 Q. With respect to your request concerning the poll books,
2 tell me exactly what Ms. Boyd -- as you recall it, what
3 Ms. Boyd, the circuit clerk, allegedly said to you in response
4 to your question to get access to the poll books.

5 THE COURT: Can you spell her name? Is it --

6 MR. SLAY: Yes, ma'am.

7 THE COURT: -- B-O-Y --

8 MR. SLAY: Becky, B-E-C-K-Y, Boyd, B-O-Y-D.

9 THE COURT: Okay. Thank you.

10 A. It was -- it was probably a 15-minute conversation in which
11 several things were said. But, essentially, she said she was
12 not allowed to let us see those poll books because she had
13 orders from the Secretary of State with an e-mail that she
14 showed me and allowed us to read stating that the unredacted
15 poll books contained birth dates, which was private
16 information, and could not be viewed by anyone else, and so
17 that I was not allowed that access.

18 We discussed how it could work, what other processes could
19 be used. And that's when she explained the only thing she
20 could do was, if I paid in advance, I could get redacted
21 copies.

22 Q. Do you know why it is that she referred to this alternate
23 process, that there would be a process to follow, that is,
24 photocopies would be made, redactions would be made and payment
25 would have to be made? Did she explain --

1 A. I don't --

2 Q. -- where that process came from?

3 A. I don't recall where she said that came from. I don't
4 recall it being a part of the Secretary of State's letter.
5 And -- I do not recall.

6 Q. Okay. But you do recall that there was a process laid out
7 to you whereby you could obtain access to the poll book
8 information. Correct?

9 A. That's correct.

10 Q. All right. So the issue for you, obviously, is the cost
11 associated with the preparation and presentation.

12 A. The cost and the urgency. As I said, we -- we had heard
13 allegations -- and we understood they were just allegations,
14 and we have great confidence in our own election people in
15 Rankin County. But because there were so many allegations from
16 all over the state, including tampering with the documents, we
17 felt like it was very urgent to get in there as quickly as
18 possible and to see those poll books.

19 Q. As you sit here today, do you have any evidence at all in
20 your possession or subject to your control that would suggest
21 that in Rankin County, Mississippi, there is an issue of
22 tampering with the election, tampering with documents, altering
23 election documents? Do you have any information in your
24 possession or under your control?

25 A. I do not have hard copies of anything. I have what amounts

1 to cause for suspicion. And the suspicion arises from the way
2 that prior to the election, as we would read reports or hear
3 anecdotal evidence that different things were going on, the
4 vote buying, the different things, that were going to taint and
5 corrupt the Republican primary and prevent the Republicans from
6 being able to determine their own candidate, as we heard this,
7 we would relay this information both to the Secretary of State,
8 the Governor and the party chairman, Joe Nosef.

9 I did this several times. I would copy stuff that appeared
10 on the news or that had been circulated. And I would say,
11 *Please take steps to prevent these illegal activities from*
12 *taking place. They're doing things that are contrary to state*
13 *law. Do something to stop it.* And the repeated answer I got
14 was always two parts: They had no responsibility and they had
15 no authority. And the finger would get pointed in another
16 direction. And it was just a round-robin effect.

17 And as a voter, I felt like I was being defrauded of the
18 fidelity of my vote and its effectively being diluted and
19 stolen from me, the power, the right to select our own
20 candidate, by these illegal activities which were appearing --
21 and I had already seen evidence of it in Hinds County -- was
22 appearing as evidence in the poll books. So the poll books --

23 THE COURT: Is there a question pending?

24 A. -- became important.

25 THE COURT: Is there a question pending?

1 MR. SLAY: I'm not sure, your Honor.

2 THE COURT: Why don't you ask a question so we can
3 move on.

4 MR. SLAY: Okay. Thank you, Judge.

5 BY MR. SLAY:

6 Q. Have you -- have you followed up the conversation that you
7 had with Ms. Boyd on June 27th with any written request for
8 documentation, poll books or otherwise?

9 A. No, I did not. My actual comment to her was at the time --
10 the legal arguments were certainly well over my ability to have
11 any say in. And so I said, well, I will simply leave that to
12 the campaign to determine.

13 Q. Did you fill out any public record request --

14 A. No, I did.

15 Q. -- provided by Rankin County?

16 A. No.

17 Q. Thank you.

18 MR. SLAY: Nothing further, your Honor.

19 THE COURT: Do you recall mentioning anything about
20 the federal statute, the National Voter Registration Act?

21 A. Would you repeat that, please?

22 THE COURT: Do you recall mentioning anything to
23 Ms. Boyd about the National Federal -- the National Voter
24 Registration Act?

25 A. No, ma'am, I did not.

1 THE COURT: Anything else? No. Okay. Thank you very
2 much. Oh, anything further?

3 MS. McDANALD: No. I was saying no redirect.

4 THE COURT: Okay. Thank you. You may step down.

5 MS. McDANALD: Plaintiffs would like to call Ellen
6 Swensen, but I believe she's sitting outside because the rule
7 has been invoked.

8 THE COURT: Well, you've got a lot of people with you.
9 Maybe they could help you out. Who's your next witness going
10 to be? Because you can assign -- you're in charge. You can
11 assign any one of those gentlemen to go get the next witness
12 when you want. Okay? Use this authority when you have it.

13 MS. McDANALD: Well, now we're just going to have one
14 more, but -- and she's awfully close. She's only on the second
15 row. But I'm going to have to ask one of the partners to do
16 that for me.

17 THE COURT: We'll see. Okay. Thank you.

18 MS. McDANALD: That was great.

19 (WITNESS SWORN)

20 THE COURT: Please be seated. And once you're
21 comfortable, pull up the chair close to the mic. Then state
22 and spell your whole name for the record, please.

23 THE WITNESS: Ellen Swensen. And it's E-L-L-E-N,
24 S-W-E-N-S-E-N.

25 THE COURT: Okay. Thank you. You may continue.

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ELLEN SWENSEN,

having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. McDANALD:

Q. Hey, Ellen.

A. Hi.

Q. Are you a resident of Mississippi?

A. No, I'm not.

Q. And where do you live?

A. California.

Q. And I understand you're recently retired.

A. Yes.

Q. Congratulations. What did you used to do?

A. I spent many years of my career working in market research. And what I did was analyze complex sets of data and -- looking for anomalies and patterns in the data, and took those findings and created strategic direction for my clients' businesses.

Q. And are you a volunteer now for True the Vote?

A. Yes, I am.

Q. And you were able then -- sorry. Are you a registered voter in Mississippi?

A. No, I'm not.

Q. So you did not recently vote in the Republican primary.

A. No.

Q. Have you been, though, to Mississippi on behalf of True the

1 Vote?

2 A. Yes. I was previously here between July 5th and 10th.

3 Q. Okay. And why did you come?

4 A. I came to -- as a volunteer. They asked me to come to
5 assist in reviewing and acquiring publicly available documents
6 to help -- or that -- to give my findings to True the Vote so
7 they could do their job of assuring whether or not this
8 election had integrity.

9 Q. Was it just you by yourself or were you with a group?

10 A. I came -- I came with a group of people from around the
11 country, and I was with a colleague named Susan Morse.

12 Q. Okay. And were you trained by True the Vote once you
13 landed in Mississippi?

14 A. Yes. We met. And they, first of all, had to take us
15 through how Mississippi elections work, because every state is
16 different and we were people from around the country. And then
17 we also focused on how the absentee ballot application process
18 works.

19 And then we were given the memo from True the Vote Attorney
20 Hogue that gave us what our authority was to request these
21 documents based on the National Voter Registration Act. We
22 were given what -- the list of all the documents we wanted to
23 acquire and a blank incident form -- incident report forms, as
24 well as a list of counties that we were assigned to.

25 Q. And with the incident --

1 THE COURT: Would you -- forgive me.

2 MS. McDANALD: Sure.

3 THE COURT: Would you go through exactly what you were
4 given again.

5 A. Okay. Sorry. We were given and shown examples of how
6 Mississippi elections work, because every state is different.
7 And, specifically, we looked at the absentee ballot application
8 and how it's supposed to be filled out and so on. And then we
9 were given the -- a memo from Eades Hogue, and it was -- he's
10 the True the Vote attorney. And the memo cited our authority
11 to request these documents. It had a quote on it, and I can't
12 recall the exact -- it's probably in the records, but it quoted
13 the NVRA statute that allows us to acquire these public
14 documents.

15 We were given blank incident report forms and a list of the
16 documents that we were to review and procure. And, finally, we
17 were given a list of our counties that we individually were
18 assigned to.

19 THE COURT: Thank you.

20 BY MS. McDANALD:

21 Q. And which counties were you assigned to?

22 A. I was -- Susan Morse and I were assigned to Leake, Jones
23 and Covington.

24 Q. Okay.

25 MS. McDANALD: And, Keithfer, I'm sorry. How do I

1 turn the screen on?

2 THE COURT: Just press the green button.

3 MR. ROBINSON: It's on.

4 MS. McDANALD: Oh, great. Thank you.

5 BY MS. McDANALD:

6 Q. Is this an example of a True the Vote incident report?

7 A. Yes.

8 Q. Okay. And under the name right there, is that --

9 THE COURT: Excuse me. For the record, what are you
10 showing her?

11 MS. McDANALD: Oh, sorry. This is Plaintiffs'
12 premarked Exhibit 5. I would offer it into evidence as a True
13 the Vote incident report authored by Ellen Swensen, our
14 witness.

15 THE COURT: Incident report authored by Ms. Swensen?
16 Okay. Objections?

17 MR. WEBB: Yes, your Honor. If I could, Jeff Webb,
18 Leake County --

19 THE COURT: Speak up.

20 MR. WEBB: Jeff Webb, Leake County Election
21 Commission. Your Honor, we would object to this document.
22 It's signed by someone other than Ms. Swensen, the witness.
23 Also contains hearsay statements as their recollection of
24 statements made by the circuit clerk, who is not a party to
25 this suit but is within the subpoena power of this court and

1 has not been subpoenaed to come here today. So we would object
2 to it as hearsay.

3 THE COURT: Okay. What's the author?

4 MS. McDANALD: In response to the hearsay objection,
5 this is not only a business record, not only is the witness who
6 offered the record on the stand, but it is also a present-sense
7 impression. I will offer evidence that it was recorded at or
8 near the time of the events that occurred.

9 THE COURT: Who wrote it?

10 BY MS. McDANALD:

11 Q. Ellen Swensen, did you write this document?

12 A. Yes, I did.

13 Q. And I see that it is signed by Susan Morse who you said was
14 with you.

15 A. In addition to my signature.

16 Q. Did you see her -- did you see her sign it?

17 A. I did.

18 MS. McDANALD: In fact, a lot of affidavits are signed
19 by a notary public, and that does not make them hearsay by
20 having the additional signature.

21 THE COURT: The fact that they're under oath does not
22 get them out of the hearsay exception. But I will allow them
23 in. Did you write this document? I think --

24 A. Yes, I did. That's my handwriting.

25 THE COURT: Okay. And did you sign it? I don't have

1 it open right here in front of me.

2 A. Yes, I did.

3 THE COURT: All right. Do you -- when was the
4 document actually written?

5 A. Immediately after we stepped out of the circuit clerk's
6 office.

7 THE COURT: All right. I'll receive it as
8 present-sense impression, and I'm also receiving it as a -- to
9 the extent it is the incident report and not the statements
10 within it, it's received as a business record. However, that
11 does not get you over the hearsay within hearsay, which I'm
12 going on the present-sense impression.

13 For the record, it is the impression of this witness,
14 not necessarily the truth. You are more than welcome to
15 cross-examine. And, by the way, this is a preliminary
16 injunction hearing, and the rules of evidence do not apply.
17 But in good faith, I'm trying to --

18 MR. WEBB: Judge, last time -- and I may have
19 overlooked it, but I did not see where Ms. Swensen signed the
20 document.

21 THE COURT: I was turning to that myself. Let's see
22 if we can get to that. Thank you. Where is your signature,
23 ma'am?

24 A. I think it's on the signature line, second page.

25 THE COURT: You need to zoom in.

1 (COMPLIED WITH REQUEST)

2 THE COURT: Can you see it now, Ms. Swensen?

3 A. Yes. Yes, that's my signature.

4 THE COURT: Okay. Great. It's signed then. Who
5 wrote the attachment?

6 A. I did, ma'am.

7 THE COURT: Thank you.

8 BY MS. McDANALD:

9 Q. I'm guessing you wrote it in the attachment because there
10 wasn't enough room in the box?

11 A. Yes. There wasn't enough room in the way the form was
12 made.

13 Q. You stated that you visited Covington, Jones and was it
14 Leake County?

15 A. Leake.

16 Q. Okay. Did you request records from Covington County?

17 A. Yes, we did. I'm trying to remember --

18 MR. SANDERS: Object, relevancy.

19 A. Yes, we did.

20 THE COURT: Counsel, for some reason -- and I
21 apologize for this -- we don't have enough microphones in here
22 for the defense side. Maybe the next time if we're ever back
23 here we will have more mics.

24 MR. SANDERS: I'm sorry, your Honor. We just objected
25 to relevance about -- anything about Covington County. It's

1 not one of the defendants.

2 THE COURT: Not one of the defendants. Thank you.

3 Nevertheless, I'm going to receive it because of the statewide
4 aspect of this. Go ahead.

5 BY MS. McDANALD:

6 Q. Where did you go in order to make a records request in
7 Covington County?

8 A. We went into the circuit clerk's office.

9 Q. And how did you make this request? Was it written or oral?

10 A. We started with oral, but then we ended up per
11 Ms. Duckworth's request putting it in writing.

12 Q. And, sorry, you said Ms. Duckworth?

13 A. Yes, in Covington County. Yes. Sorry. She's the circuit
14 clerk.

15 Q. Thank you. And what specifically did you request as far as
16 documents?

17 A. We requested three things. One was an electronic file with
18 the -- a list of everybody who voted in the Democrat primary
19 and Democratic runoff, as well as the Republican primary and
20 Republican runoff in June. Cut by precinct and then cut by
21 absentee versus polling place votes. And we requested that
22 electronically.

23 We secondly requested to review the poll book from
24 June 24th. And we requested to look at the absentee ballot
25 envelopes, the absentee ballot applications and the absentee

1 request forms.

2 Q. And were you provided any documents in response to your
3 request?

4 A. No, we were not.

5 THE COURT: And how many voters are there roughly in
6 Covington County?

7 A. I do not know.

8 THE COURT: You don't know. Who knows.

9 A. I don't know, your Honor.

10 THE COURT: Roughly. 10? 200,000? Nobody knows?

11 MR. WALLACE: Voters or poll books, your Honor?

12 THE COURT: Eligible voters.

13 MR. WALLACE: Your Honor, I don't know. But a number
14 of people who voted are in the record. The certification
15 letter is attached as an exhibit to our response to the TRO
16 motion, and that's got each of the 82 counties, how many people
17 voted.

18 THE COURT: Okay. Well, that wasn't what I asked,
19 because she asked for poll books.

20 MR. WALLACE: I understand.

21 THE COURT: She asked for applications. So I'm
22 gathering that's a very large number of documents. That's why
23 I was asking about the number of eligible voters in that
24 county. Anyway, does anybody know? No? Okay. But we can
25 look up the voters, but that's not what I asked. I appreciate

1 the information, however. Thank you. Okay. Next.

2 BY MS. McDANALD:

3 Q. "Next" is a perfect word. Next, which county did you go to
4 next?

5 A. Well, we actually started in Leake County on Monday and
6 so -- and then Covington was our last county. So Jones was
7 before that on the same day.

8 Q. And I apologize --

9 THE COURT: I'm sorry. I may have stepped on your
10 questions, but what happened?

11 MS. McDANALD: Oh, with the Covington County, she said
12 that she requested records and that she was denied.

13 THE COURT: I'll let -- thank you. I'll let the
14 witness tell me.

15 MS. McDANALD: Sorry, your Honor.

16 THE COURT: Because I gathered there was more to it
17 than that.

18 A. As I said earlier, we did request it verbally. Then she
19 asked us to put it in writing. And she -- Ms. Duckworth, the
20 circuit clerk, said that she was too busy to deal with it that
21 day because she was leaving the next day for a convention, and
22 we couldn't -- we could come back Monday and then she could
23 address the whole thing then.

24 THE COURT: Okay. So did you ever put it in writing?

25 A. Yes, we did, and we left that with Ms. Duckworth.

1 THE COURT: Okay. Thank you.

2 MS. McDANALD: And this is not an item that was
3 included as an exhibit on our exhibits list. This is a Leake
4 County request. If I put it up here, is that okay? Everybody
5 can see it on the screen?

6 THE COURT: All right. What number?

7 MS. McDANALD: This would then be Plaintiffs'
8 Exhibit 10 I think.

9 THE COURT: All right.

10 MS. McDANALD: Exhibit 10.

11 THE COURT: Was there an exhibit that I missed on the
12 Covington County? I don't think it was introduced if it was --

13 STAFF ATTORNEY: That's 5.

14 THE COURT: 5 is --

15 MS. McDANALD: Covington.

16 THE COURT: Okay. What about Lee? Is there an
17 exhibit on Lee?

18 MS. McDANALD: It would be Exhibit 10. It wasn't
19 included in the exhibit list.

20 MR. WEBB: Your Honor, I believe I objected to the
21 wrong.

22 THE COURT: Yeah. I'm sorry. I'm confused. That's
23 what's confusing me too. I'm keeping notes, and I was
24 confused.

25 MR. WEBB: I thought it was Leake, but I would just

1 enter my same objections for the Leake County ones. And I
2 don't believe -- I don't believe she signed the Leake County
3 ones, unless I overlooked it. But just for the record, thank
4 you.

5 THE COURT: Okay. Well, she was testifying about Lee
6 County and then Exhibit 5 was introduced. But it looks like
7 Exhibit 5 may be the Covington County -- or Lee? Which one?
8 It was Covington. I can see it on its face.

9 A. I was testifying about Covington.

10 THE COURT: Fair enough. Then 10 is Lee.

11 MS. McDANALD: Yes.

12 THE COURT REPORTER: Is it Leake or Lee?

13 MS. McDANALD: Leake, L-E-A-K-E.

14 THE COURT: Oh. Thank you.

15 BY MS. McDANALD:

16 Q. Did you make a records request to Leake County?

17 A. Yes, we did. We verbally requested the same list. I can
18 go over it again if you'd like.

19 Q. Oh, I think that we probably -- the record should be fine
20 on the list. But where did you go to make the request?

21 A. Went to the circuit clerk -- circuit court clerk's office
22 in Leake County.

23 Q. And who did you speak there with?

24 A. Kathy Henderson, the circuit clerk.

25 Q. And did you make the request for the documents being the

1 same documents that you requested in Covington?

2 A. Yes, we did. We did it verbally and then she asked us to
3 put it in writing.

4 Q. And did you receive any documents in response to your
5 request?

6 A. No, we did not.

7 Q. You stated that you also visited Jones County.

8 A. Jones County.

9 Q. And I'm going to put the incident report marked Exhibit 4
10 for Jones County. Where did you go in order to request records
11 from Jones County?

12 A. To the circuit court clerk in Laurel.

13 Q. And who did you speak with there?

14 A. The deputy circuit clerk. I believe her name was Helen. I
15 can't remember right now, but it was a deputy clerk.

16 Q. Okay. And did you make the record request verbally or in
17 writing?

18 A. Verbally at first and then in writing.

19 Q. And what was the response to your request?

20 A. This deputy said that the circuit clerk was out on a
21 capital murder case in a different county and would not be back
22 until possibly the next day. And then nobody in the office had
23 any authority, even though they're all deputies, to give us --
24 to grant us any authority to acquire the documents we wanted to
25 acquire.

1 Q. How many deputy clerks did you speak with?

2 A. We spoke with the one deputy, and then Susan Morse asked if
3 there was an election commissioner there, perhaps we could get
4 some authority from them. Two people came out, and their names
5 are in the record. And both of them said they did not have the
6 authority. Only Bart Gavin had the authority to grant any of
7 this that we had asked for.

8 Q. Okay. Have you ever received any records in response to
9 your request from Jones County?

10 A. No, we have not.

11 Q. Thank you.

12 MS. McDANALD: The plaintiffs would like to offer
13 Exhibit Number 4 into evidence.

14 THE COURT: Received under the same principles as
15 articulated earlier.

16 (EXHIBIT P-4 MARKED)

17 MS. McDANALD: Sure. And I'm not sure I exactly
18 offered --

19 THE COURT: You didn't. Let me just --

20 MS. McDANALD: -- Exhibit 10.

21 THE COURT: I've made an assumption here.

22 Ms. Swensen, did you write -- or Swanson. I'm sorry. Did you
23 write the reports for these other counties, Leake and Jones?

24 A. Yes. I wrote all the reports I've seen on the screen
25 today.

1 THE COURT: Okay. Thank you.

2 (EXHIBIT P-10 MARKED)

3 MS. McDANALD: And 4 and 5 were received as well?

4 THE COURT: Yes.

5 (EXHIBIT P-5 MARKED)

6 THE COURT: Are you giving copies out to everybody of
7 10?

8 MS. McDANALD: I don't actually have copies with me
9 for everyone on 10, but I can show everyone.

10 THE COURT: We'll make copies for everybody at the end
11 of the hearing.

12 MS. McDANALD: Certainly. And I think -- I think we
13 fully intend -- there was a request from defendants that we
14 would produce all of our True the Vote incident reports, and we
15 were happy to disclose them all.

16 THE COURT: That's fine, but they're not all being
17 received in evidence today, and just remember 10 is. And I'd
18 love that, and the court reporter needs it too. So we'll get
19 that at the end of the hearing.

20 MS. McDANALD: Okay.

21 BY MS. McDANALD:

22 Q. Did you have any other responsibilities on behalf of True
23 the Vote during this visit that you made during the July dates
24 you disclosed?

25 A. No. It was basically going to the three counties and then

1 reporting back and recording everything -- writing everything
2 we had and then giving that back to True the Vote.

3 Q. And I just want to bring this up in a slightly leading
4 question. I apologize. But you had told me that there was an
5 app that you put on your phone?

6 A. Oh, yeah. That was part of -- I assume to be part of the
7 transmission of the data. When we go out in a waiting area,
8 right immediately after the incident I'd write everything out
9 exactly as it happened. And then I would -- we have a
10 TurboScan app on my phone.

11 And so we would scan the documents by photographing them
12 with the phone and then e-mail them to Vicki Pullen who is with
13 True the Vote. And so they were immediately -- they were all
14 relayed in realtime. Then when we returned that evening from
15 all our counties, we would give the originals over to Vicki
16 Pullen.

17 Q. Thank you.

18 MS. McDANALD: Pass the witness.

19 THE COURT: I think this is implicit, but just in
20 case, in Leake County you left a letter. And did you ever
21 receive any documents?

22 A. From Leake County we have not received any documents.

23 THE COURT: And did anyone ask you to pay money to
24 redact?

25 A. We --

1 THE COURT: That you would get the documents if you
2 paid a fee of some sort?

3 A. No. When we requested the poll books, Ms. Henderson came
4 back and said that they would have to be redacted. I cited the
5 NVRA, that we don't believe it does have to be redacted and we
6 do not want to pay money for it. She went back to the Attorney
7 General -- you know, phoned the Attorney General's Office again
8 and came back and said, *Sorry. They have to be redacted.*

9 BY MS. McDANALD:

10 Q. And sorry, if I may, what was the estimated cost of the
11 redaction?

12 A. The redaction, we never got a quote because I said that we
13 weren't going to -- we didn't want -- did not want to have them
14 redacted.

15 Q. Did any other counties, Jones or Covington, in addition to
16 Leake, give you a quote for how much the redaction would be?

17 A. No. I never got a quote for redaction.

18 Q. Okay.

19 THE COURT: Thank you. Any questions for defense?

20 MR. MATHENY: A few questions from the Secretary of
21 State, your Honor. If I may, could I see --

22 THE COURT: Do you want to see that document?

23 MR. MATHENY: Yes.

24 THE COURT: To the extent -- you know, he's looking at
25 that document longingly. Okay. We could make a copy if you

1 want to start on something else, sir. Is this the only copy in
2 the courtroom?

3 MR. NIXON: Yes.

4 MS. McDANALD: I think so, and I actually took it --

5 THE COURT: We can make a couple of copies if you
6 want.

7 MS. McDANALD: Actually, I took it out of Ellen's
8 file. She brought a file of report --

9 THE COURT: Ellen is who?

10 MS. McDANALD: Ellen is our witness on the stand.

11 THE COURT: I know. I'm trying to train her. Okay.
12 Go make five copies, please. Are there any other documents in
13 the record that are not copied already? Because my clerk could
14 make the copies as a courtesy for you. No? Hearing no
15 votes -- or no request, we'll move on. We'll have those back
16 in just a minute. If could start somewhere else, that would be
17 terrific.

18 MR. MATHENY: Sure.

19 **CROSS-EXAMINATION**

20 BY MR. MATHENY:

21 Q. Let's start with Covington County, if we can.

22 A. Okay.

23 Q. As I understood your testimony, you and Susan Morse --

24 A. Yes.

25 Q. -- went to Covington County on July 8th.

1 A. Yes.

2 Q. And let me make sure that I've got this correct. You made
3 a request from the circuit clerk's office for absentee
4 applications, absentee envelopes, absentee request forms, and
5 poll books for the June 24th, 2014, runoff. Is that correct?

6 A. Yes. In addition to the electronic file that we were
7 requesting.

8 Q. Okay. I'll get to that electronic file in just a second;
9 but as far as actual documents that will exist on paper, those
10 were the documents that you requested from the Covington County
11 Circuit Clerk?

12 A. I believe we also asked for some postcards -- the UOCAVA
13 postcards that were available, if my memory serves me.

14 Q. Any other actual physical documents that you --

15 A. No, not beyond --

16 Q. Let me finish my question before you answer, please.

17 A. Sorry.

18 Q. Any other actual physical documents that you requested from
19 the Covington County Circuit Clerk?

20 A. "Physical" meaning on paper?

21 Q. On paper.

22 A. No.

23 Q. Did anybody at the Covington County Circuit Clerk's Office
24 advise you that absentee ballot applications, absentee
25 envelopes, or absentee request forms were sealed in poll books

1 in Covington County on July 8th, 2014?

2 A. No. That was not said.

3 Q. When you were there at the circuit clerk's office in
4 Covington County, was there anybody from the Cochran or
5 McDaniel campaigns there conducting an examination of the
6 ballot boxes?

7 A. Not that I saw.

8 Q. Let me ask you about the electronic files you asked for.
9 As I understood your testimony, before you went out to these
10 counties, a bunch of True the Vote volunteers got together and
11 had a meeting with Mr. Hogue?

12 A. No. Mr. Hogue was not there at the training.

13 Q. Okay. And -- but this was a training meeting where
14 everybody got together.

15 A. Yes.

16 Q. And one of the things that you were provided at that
17 meeting was a list of everything you wanted to ask for from
18 circuit clerks' offices. Is that correct?

19 A. Yes.

20 THE COURT: Have these materials been turned over in
21 discovery?

22 MR. MATHENY: I believe so. Well, I wouldn't call it
23 discovery, your Honor.

24 THE COURT: No.

25 MR. MATHENY: We were given the exhibit list, and

1 that's what I understand -- and I'll show it to the witness --

2 THE COURT: I'm specifically asking about the training
3 materials that you were just asking about.

4 MR. MATHENY: I was just getting to that. I was going
5 to ask.

6 THE COURT: I see.

7 BY MR. MATHENY:

8 Q. What I'm going to show you is document 43-5, page 5 of 5.
9 Let me represent to you this is the third page of -- I guess
10 the fourth page of the Covington County Clerk's Office incident
11 report that you were talking about earlier. Is this page here,
12 this list, is this a list that was given to you at this
13 training meeting?

14 A. This is the list I took away from -- from the training, as
15 far as I know.

16 Q. And did you, in turn, provide this list to the Covington
17 County Circuit Clerk as your written request?

18 A. Yes. We -- there are no forms available. So we -- this is
19 what we had to do throughout the counties, write -- in
20 addition, you know, write out, add some writing to them too.

21 Q. But this is one you specifically did for Covington County,
22 because it says "Covington" --

23 A. Yes. Yes.

24 Q. -- "County" at the top?

25 A. Susan Morse wrote this, but this is what we submitted to

1 Covington County.

2 Q. And remind me again, what was it that you were told with
3 respect to the electronic information that you requested?

4 A. We were told about that as well as everything -- that
5 nothing could be addressed until the following Monday because
6 the court clerk was too busy preparing to go out of town the
7 next day for a convention.

8 Q. And as I understand it from your incident report, you were
9 told to just come back on Monday. Is that correct?

10 A. Yes.

11 Q. Did you actually go back on Monday?

12 A. No.

13 Q. And that was July 8th that you were at the Covington County
14 Circuit Clerk's Office.

15 A. I believe so, yes.

16 Q. What day of the week was that?

17 A. I believe it was a Wednesday.

18 Q. You believe it was a Wednesday.

19 A. Monday? Or Tuesday?

20 Q. And so when you --

21 A. It was a Tuesday. I'm sorry.

22 Q. It was a Tuesday. So when you were told to come back on
23 Monday, that would have been Monday of the next week?

24 A. Right, almost a week later.

25 Q. So instead of going back on Monday, I think this lawsuit

1 was filed on July 9th. Is that right?

2 A. Yes. We went back to California.

3 Q. You left and went to California -- went back to California?

4 A. (Nods head affirmatively)

5 Q. When did you go back to California?

6 A. The Wednesday -- no -- sorry. Wednesday.

7 Q. Do you know if anybody else actually followed up by going
8 back that Monday or at any time --

9 A. I do not know --

10 Q. -- after that?

11 A. I do not know if they did or not.

12 Q. Let me ask you about the Jones County visit.

13 MR. MATHENY: And I'm sorry. I wasn't following if
14 this was actually in evidence or not, but --

15 THE COURT: I received all the three incident reports.

16 MR. MATHENY: Okay.

17 BY MR. MATHENY:

18 Q. When you went to Jones County, I take it that you made the
19 exact same kind of request in terms of the specific information
20 that you requested from the circuit clerk's office.

21 A. Yes.

22 Q. Is that correct? And, in fact, this is on the exhibit
23 that's been entered into evidence and is also document 43-4.

24 But this looks to me like the same written request that was
25 handed over to the Covington County Circuit Clerk's Office. Is

1 that correct?

2 A. Susan Morse wrote this for this county, and they took a
3 copy of it. That's why -- they gave us a copy back, and that's
4 why it's kind of bad. You can't read it very well.

5 Q. You're talking about the --

6 A. I did --

7 Q. -- writing here?

8 A. Yes.

9 Q. Well, I guess let me ask a better question. Is this the
10 same list that was not only the basis of the written request to
11 Covington County but also from the volunteers meeting that you
12 were talking about earlier?

13 A. Yes.

14 Q. So you're requesting the same materials from a different
15 circuit clerk's office. This time it's Jones County. And what
16 day was it?

17 A. It was the same day as Covington, which was I think the --
18 the 8th, I believe.

19 Q. Both July 8th.

20 A. Yeah.

21 Q. And so let me ask the same kind of questions. Were the
22 Cochran or McDaniel campaigns there in Jones County inspecting
23 the ballot boxes on July 8th?

24 A. I did not see anybody from the campaigns.

25 THE COURT: Do you know -- did you hear any

1 discussion?

2 A. For Jones County?

3 THE COURT: Yeah, or the other one, either place.

4 A. Jones or Covington? No. I did not see or sense that there
5 was anyone there at that time for those two counties.

6 BY MR. MATHENY:

7 Q. Did anybody at the circuit clerk's office make mention to
8 you about a lawsuit that had been -- a lawsuit between Chris
9 McDaniel and the Jones County Circuit Clerk about producing
10 poll books?

11 A. No.

12 Q. Do you know whether or not the circuit judge there in Jones
13 County had issued an order ordering the circuit clerks to
14 produce or not produce poll books to the McDaniel campaign
15 there on July 9th -- 8th?

16 A. No. No. I do not.

17 Q. This written request, even though we can't see what it says
18 up there, you can tell us what happened. Did you leave this
19 written request there with the Jones County --

20 A. Yes, we did, the original. And this is a copy they gave us
21 back of that.

22 Q. What documents -- and I'm talking about actual paper
23 documents you requested. What actual paper documents did you
24 eventually get to review there with respect to Jones County, if
25 any?

1 A. None.

2 Q. Did the Jones County Clerk's Office ask you to come back at
3 a later date?

4 A. They said that Mr. Gavin was out on a -- out for the day on
5 business and he might be back the next day. But we didn't
6 know. So we weren't necessarily invited back the next day.

7 Q. But, in any event, you didn't go back another day after
8 that --

9 A. No --

10 Q. -- to follow up.

11 A. -- we did not. But we left the written request.

12 Q. As far as you know, they haven't followed up by sending you
13 any electronic files in response to your written request.

14 A. As far as I know, not.

15 Q. Did any of your written requests specify that they were
16 made under the NVRA, or National Voting Right -- Registration
17 Act?

18 A. Not the written request itself. In Leake County we did,
19 though, give them the memo that cited our authority.

20 Q. Let me make sure that I'm following you. With respect to
21 Leake County, is this a copy of the memo you're talking about?

22 A. Yes.

23 THE COURT: What are you showing her? 10? A page of
24 10?

25 MR. MATHENY: It's --

1 THE COURT: What are you showing her, in other words?

2 MR. MATHENY: I have it as document 25-1, and I think
3 it -- the confusion I was having about what was the exhibit
4 earlier --

5 THE COURT: I don't think that the page you just
6 showed on the record is -- the page you just showed on the Elmo
7 is on the record.

8 MR. MATHENY: That's what I was just -- it may be
9 better that I hand this to the witness and ask her if she --

10 THE COURT: You can handle it any way that you want,
11 but I don't believe I've seen that before in this record today.

12 (DOCUMENT TENDERED TO WITNESS)

13 BY MR. MATHENY:

14 Q. Ma'am, do you recognize that -- I believe it's a four-page
15 document that I just handed you. Do you recognize that?

16 A. Yes, I do.

17 Q. What is it?

18 A. It's a -- it's an incident report written by Susan Morse
19 and -- asking for the AG's opinion in writing. And then
20 attached to it is her handwritten records request for the
21 documents that we're looking for.

22 Q. And I guess my question is, with respect to the handwritten
23 request there -- first off, let me ask you, is that your
24 handwriting or is that --

25 A. That is Susan Morse's handwriting.

1 Q. And is that the written request that you submitted to the
2 Leake County Circuit Clerk for the documents and electronic
3 files that you were requesting?

4 A. Yes, but I think that this is referred to in a different
5 incident report possibly, but...

6 THE COURT: I assume this is going to be discussed
7 with the next witness. Is that Morse? Morse or Mor-riss? Or
8 not?

9 MS. McDANALD: No, your Honor. Ms. Morse did not make
10 it out. But our next witness is Julie Patrick. I would just
11 like to offer that into evidence since it's being used against
12 us during cross-examination, and that makes it a party opponent
13 admission.

14 THE COURT: Yeah. What do you think?

15 MR. MATHENY: Well, I can -- that's fine by me. I
16 think that they're both incident reports that relate to the
17 same visit to Leake County.

18 BY MR. MATHENY:

19 Q. My question would be this: You have that there in front of
20 you, and I believe you said that that was the written request
21 that you left there with Leake County --

22 MS. McDANALD: I apologize. Can I get a ruling on the
23 offer of evidence?

24 THE COURT: Not right now. I'm still waiting for a
25 foundation. I'm trying to figure out who wrote this and

1 everything else. So I'm holding on the ruling. This is all in
2 the nature of foundation. It is to me.

3 MR. MATHENY: That was the purpose, your Honor.

4 BY MR. MATHENY:

5 Q. The written request that you have there, I believe you had
6 just said that it was written by Susan Morse.

7 A. Yes.

8 Q. Is that right? But is that the written request that you
9 and Susan Morse left with the Leake County Circuit Clerk's
10 Office?

11 A. It looks to be. Yes.

12 THE COURT: Okay. Then are you offering it or should
13 I just accept the plaintiffs' offer and we'll make it number
14 11?

15 MR. MATHENY: Your Honor, we can make it number 11. I
16 only have one more question about the document if it's
17 admissible.

18 THE COURT: I would like to get the document either in
19 or not, I mean. So I'm going to go ahead and receive it.

20 MR. MATHENY: Certainly.

21 THE COURT: It's being offered. I'm going to make it
22 Plaintiffs' 11, but that is a different document from 10 that
23 we earlier received.

24 MR. MATHENY: Right.

25 (EXHIBIT P-11 MARKED)

1 BY MR. MATHENY:

2 Q. And my question is this: There on your written request,
3 isn't it true that your written request does not state anything
4 about requesting any of the documents with -- under the
5 National Voter Registration Act? Is that correct?

6 A. Please repeat the question.

7 Q. Let me rephrase it. At the top of that handwritten
8 document, it says, "Public Records Request." Correct?

9 A. Yes.

10 Q. Does anything in writing in your written request there --
11 does it make a request for any of the documents under the
12 National Voter Registration Act?

13 A. It does not mention the National Voter Registration Act in
14 this document.

15 Q. Thank you very much.

16 THE COURT: Okay. My clerk will make copies for
17 everybody. Any other cross?

18 MR. WEBB: Leake County, if I may.

19 THE COURT: Yeah. Okay.

20 MR. WEBB: Judge, forgive me. I thought that 10 was a
21 composite as the attachment to the bill of particulars. But
22 I'm dealing with the document that he just referred to.

23 THE COURT: I'm sorry. What I was given has three or
24 four pages to it, three pages.

25 MR. WEBB: And I --

1 THE COURT: Four. I'm sorry. Four pages. So we're
2 going to have 11 be the other one. If there's duplication,
3 then so be it.

4 MR. WEBB: And I'll try not to go through the same
5 questions.

6 **CROSS-EXAMINATION**

7 BY MR. WEBB:

8 Q. My name is Jeff Webb, and I represent just Leake County.
9 So that's all.

10 A. Okay.

11 Q. And that was -- Kathy Henderson is I think who you spoke
12 with there.

13 A. Uh-huh (indicating yes).

14 Q. And I don't know if you were asked this. I know you were
15 of the other counties. But was there a ballot box review going
16 on at the time you were in Leake County?

17 A. I know that the candidates were in Leake County in a room
18 that we could not see and -- but I'm not aware of exactly what
19 documents they were going through, though.

20 Q. Okay. And I gather from your other testimony that you had
21 a conversation and then you reduced your request to writing,
22 which I think is here, which is now Exhibit 11, if I'm not
23 mistaken?

24 A. Yes. We were refused on the poll -- well, excuse me. We
25 refused -- we could access the poll book once the candidates

1 were done with it, but it would be redacted. And we were told
2 we could not see the absentee materials. So it was reduced to
3 this request in writing, which is for the data.

4 Q. Okay. But you made your formal public records request
5 after the discussion. And this is what was left with the
6 clerk.

7 A. Yes.

8 Q. Okay. And this document asks for four things, which are
9 the voters, Republican and Democrat, who voted in June 5 and
10 the primary runoff elections. Correct?

11 A. Correct.

12 Q. Okay. And what were you told about those records?

13 A. We were told that Ms. Henderson's data person would be out
14 and -- and that she wouldn't answer whether we could get it or
15 not that day.

16 Q. But you weren't -- were you given a price?

17 A. Yes. The next day she phoned -- I was driving. Susan
18 Morse was on the phone. She phoned Susan Morse and said we
19 could access -- we could get this disk and it would be \$100.

20 Q. Okay. Did you think that price to be unreasonable for that
21 information?

22 A. Yes, we did.

23 Q. You did?

24 A. Yes.

25 Q. For all that information? And that would be in electronic

1 format?

2 A. On a disk in electronic format.

3 Q. And that would --

4 THE COURT: What are we talking about in terms of
5 quantity? \$100 for one page might be a lot, but \$100 for
6 10,000 pages might be another story.

7 MR. WEBB: And, Judge, I can't tell you how many pages
8 it would have been, but it would have been each voter in those
9 Republican and Democrat in those two elections. So it would be
10 considerable, but I can't tell you how many pages.

11 THE COURT: Okay. I guess that's in the Republican
12 Party exhibit. Does that exhibit you mentioned earlier have
13 the voters for the primary or the runoff?

14 MR. WALLACE: It's the runoff certifications, your
15 Honor.

16 THE COURT: Oh, that's different.

17 BY MR. WEBB:

18 Q. And just to clear up, this would have been, if I'm not
19 mistaken, Ms. Swensen, the second page of your request?

20 A. Yes.

21 Q. And that is what you left with the circuit clerk.

22 A. Yes.

23 Q. And I believe, if I'm not mistaken, this would have been
24 one of your incident reports signed by Susan Morse for Leake
25 County?

1 A. Yes. This is the one referring to the phone call that she
2 got when I was driving.

3 Q. Okay. And, again, you didn't sign any of the Leake County
4 incident reports. Correct?

5 A. Well, yes, I did. I didn't do this one because I -- she
6 was on the phone and I was not party to exactly what
7 Ms. Henderson said. So I could not sign this one.

8 Q. All right. I -- and I'll let you respond. I have that one
9 and two others. And unless I overlook it, you didn't sign any
10 of those, unless there's a fourth.

11 A. I only signed --

12 Q. I know Covington County --

13 A. Sorry.

14 Q. -- that there was a mistake, but -- you had signed it. But
15 as far as Leake County, I don't see that you signed those.

16 A. I don't have in front of me to know how many I signed, but
17 I only signed the ones where I actually heard the conversation.

18 Q. And in this one which you --

19 THE COURT: You're losing me. Are you saying she did
20 not sign 10 or 11 or 5 or 4? What are we talking about?

21 MR. WEBB: It would be Leake County, which was 10 and
22 11. I did not see any signatures on any documents for Leake
23 County.

24 THE COURT: Okay.

25 MR. WEBB: I could have overlooked them, but I did not

1 see them in anything that I had, your Honor.

2 THE COURT: Okay.

3 MR. WEBB: And I guess if counsel has those, she
4 could, you know, raise that when she gets back up.

5 THE COURT: That's fine.

6 BY MR. WEBB:

7 Q. And then just finally, the -- in your notice here,
8 *Electronic reports request was granted, and we could pick up*
9 *the disk when we came back to view poll books. The fee was*
10 *\$100 and did we want it?* I guess that would have been from
11 Ms. Henderson. *I said, Yes, we wanted it, and we would get the*
12 *\$100 to her. I'm not sure if we would be --* I can't read some
13 of that. But, in any event, is that your writing or
14 Ms. Morse's writing?

15 A. Ms. Morse's writing.

16 Q. Okay. And you did not return with the \$100 or return to
17 request the information.

18 A. No. We were in other parts of the state.

19 Q. Okay. And so you don't know the fact that Ms. -- I have
20 the disk with me. Ms. Henderson prepared that disk. So it's
21 ready for you, and anytime -- it states here you were going to
22 pick that up for the cost of \$100. Is that your comment?

23 A. That is Susan Morse's writing, yeah.

24 Q. Well --

25 THE COURT: The answer is you did not get it.

1 Correct?

2 A. I did not --

3 THE COURT: You did not get it.

4 A. I did not get --

5 THE COURT: The disk that he's referring to.

6 A. No, I did not get the disk.

7 BY MR. WEBB:

8 Q. Did you advise the clerk that you would be picking it up?

9 A. No, I did not. Susan Morse was the person who is on this.

10 Q. Oh, I thought all of these were written by you.

11 A. No. Only the ones I've signed and that I witnessed were
12 written by me.

13 THE COURT: Exhibit 10 is signed by you. Would you
14 show the witness Exhibit 10 for us, please. That's not 11.
15 And 11 is part of what we're discussing, I grant you. So just
16 for the record, I believe the signature on 10, dated July 7th,
17 2014, is signed by you, ma'am.

18 MR. WEBB: Is that the Covington County or is that a
19 Leake County?

20 THE COURT: Leake County, Exhibit 10, that we had
21 copied for you.

22 MR. WEBB: Okay. That's the one.

23 THE COURT: Maybe you don't have it yet. Okay.

24 (DOCUMENT TENDERED TO COUNSEL)

25 THE COURT: Now, 11 may be a completely different

1 story.

2 BY MR. WEBB:

3 Q. But, in any event, I -- maybe I misunderstood. I thought
4 you had the conversation with Ms. Henderson about the \$100 on
5 the telephone while you were driving.

6 A. No. I was driving, and Susan was on the telephone.

7 Q. Okay. So you heard that conversation.

8 A. Heard Susan's half of the conversation.

9 Q. So is this accurate in the documents that you and your
10 counsel has presented that the statement was made that there
11 would be a return with \$100 to pick the information up?

12 A. Yes.

13 Q. Okay.

14 MR. WEBB: No other questions.

15 THE COURT: Is there going to be evidence about what
16 the \$100 got her -- or got them, if they had chosen to pick it
17 up?

18 MR. WEBB: Well, it was all of the information they
19 had requested in the only document they left with Leake County,
20 which was the four issues of the Democrat, Republican voters.
21 There was no issue that's been produced as with regard to poll
22 books, redacted information in their written document.

23 THE COURT: Fair enough. But the quantity -- there's
24 an issue in the statute about at reasonable cost. And I just
25 was curious to know if somebody was going to put in evidence

1 about what was being provided so that then I could evaluate,
2 assuming redaction is permissible, what a reasonable cost is.
3 It was a reasonable cost for copying. We all know that.

4 MR. WEBB: Right.

5 THE COURT: But the evidence is that the counties
6 wanted to charge for the redaction efforts also. And I'm just
7 trying to figure out -- I don't know and the record, more
8 importantly, does not know what Leake County has in the way of
9 voters. Okay?

10 MR. WEBB: Okay. Very well. And, in all honesty, I
11 would have to supplement that to the court. But I also would
12 like to end with the point that the only record that Leake
13 County received was for that information, which was prepared.
14 It had nothing to do with redaction of birth dates or poll
15 books or anything of that nature.

16 THE COURT: Okay. I don't have Exhibit 11 yet. So
17 thank you.

18 (COURT AND STAFF ATTORNEY CONFERRED)

19 THE COURT: Counsel, why don't one of you come up and
20 get copies of this Exhibit 11.

21 (COMPLIED WITH REQUEST)

22 THE COURT: Ms. Swensen, I'm now looking at Exhibit
23 11, and I do understand you did not sign this. But the top of
24 the first line of the incident report says "Request," I guess
25 it says, "for AG Opinion in Writing." This is what you left

1 with the county?

2 A. Those seem to be in the wrong order. I don't think that
3 that attachment goes with that incident report. It's not --
4 because it's just --

5 THE COURT: Okay. That's part of why I'm confused
6 too. How about this? Counsel for the plaintiff -- plaintiffs,
7 we don't have Susan Morse here, but I said in the interest of
8 speeding things along that I would receive this document 11.
9 But document 11 does not appear to be properly stapled in the
10 sense that it's -- I've been given four pages. It is in the
11 bill of particulars as a four-page document, for the record,
12 25-1.

13 But the first two pages look like an incident report,
14 you know, and the backup -- well, the first page looks like
15 Leake County. The second page looks like another incident
16 report to the -- as a request for the AG opinion in writing.
17 The third page is a -- fully handwritten page that says -- it's
18 entitled "Public Records Request, July 7th, 2014." And it
19 says, "To: Leake County Circuit Clerk, Mississippi. From:
20 Susan Morse."

21 The fourth page is at the top listed as -- or entitled
22 "Public Records Request, page 2," same date, July 7th, 2014.
23 And it appears to be a continuation of page 3. It's a public
24 records request.

25 I'm honestly questioning whether this is compiled

1 correctly. It may be how counsel got it. But I'll just note
2 that it -- I don't understand why someone would give a request
3 to the AG to Leake County. I just don't understand that. And
4 the record does not reflect it. And it may not matter,
5 frankly; but I'm pointing out this is an inconsistent
6 collection. And so I'll assume at least that the first page,
7 third and fourth pages are together, should be together, but
8 the second page is questionable. Okay?

9 MR. NIXON: I understand.

10 THE COURT: There's no foundation for the second page.

11 MR. NIXON: I agree. I understand. In our haste to
12 provide you the bill of particulars and get everything --

13 THE COURT: Right.

14 MR. NIXON: -- there's probably a mistake made.

15 THE COURT: Okay. I'm just going to then say that
16 I'm -- I'm going to assume, until there's evidence --
17 admissible evidence to the contrary, that this page two was not
18 received by Leake County. I don't know if Leake County has an
19 opinion on that or not.

20 MR. WEBB: Judge, I think, clearly, anything in the
21 incident reports that they wrote after the fact -- that was why
22 I was objecting as hearsay. That's the things they wrote. We
23 didn't -- Leake County --

24 THE COURT: I'm not -- we're past that, sir.

25 MR. WEBB: I know, but Leake County did not receive

1 any of the incident reports.

2 THE COURT: Okay.

3 MR. WEBB: We received the public records request,
4 which is page 3 and 4 of the exhibit.

5 THE COURT: That's the question. Fine. Thank you
6 very much.

7 MR. NIXON: Judge, it's just a matter of housekeeping.
8 We have and brought with us all incident reports from all 20
9 people or ten teams that went out, even though many of them,
10 most of them we didn't think were relevant to the bill of
11 particulars because you asked in relation to this lawsuit. So
12 these dealt with other counties. Counsel in the morning at
13 breaks has indicated that they'd like to have copies of all of
14 them, and we would like to produce copies of all of them in --
15 just in the manner we received them from our client. So --

16 THE COURT: I'm doing that in the nature of initial
17 disclosures or discovery, however you want to characterize it.

18 MR. NIXON: Would you like for -- would you like for
19 us to -- one, we can just make copies today or, two, we can do
20 another kind of upload to PACER to make sure everybody gets
21 copies of everything.

22 Now, when we -- when we came, we knew we only had an
23 hour, which is now a full day -- thank you -- but we did not
24 bring all of the witnesses who did all of the witness reports
25 because we just wanted show the court samples of kind of --

1 THE COURT: Under my theory of your preliminary
2 injunction motion, you didn't need to bring all the witnesses,
3 and that's fine. I would like you to make production of the
4 documents to the opposing side. And you can do it any way you
5 see fit, electronically, hard copy. You decide. You two --
6 all the parties could decide. Obviously, electronically would
7 be a lot easier.

8 But I do not want this listed as an exhibit in this
9 hearing. It's beyond the scope of the hearing; and, frankly,
10 it will burden our record. And when and if it's necessary,
11 we'll deal with all those other incident reports. There's no
12 foundation for them unless a witness I'm seeing wrote it, or in
13 this case I'm stretching it a little for Ms. Morse.

14 MR. NIXON: Right.

15 THE COURT: But I would appreciate the production.
16 That would be great. But it's to the other side, not to me.
17 So not on PACER.

18 MR. NIXON: Would the court request that the incident
19 reports be provided with an affidavit from each of the
20 individuals who wrote them saying, "I wrote them"?

21 THE COURT: You can do it however you want. It's not
22 part of this hearing. Really, however you see fit. Okay. Do
23 we have any more questions for this witness?

24 MR. WALLACE: One, your Honor.

25 THE COURT: Okay.

CROSS-EXAMINATION

BY MR. WALLACE:

Q. Ms. Swensen, I have a question about your training and it has to do with the document that True the Vote's counsel put in the record. And it's the only copy I have of it. I refer to document 25-2 in the court file, and it is page 9 of 25-2. I'm about to hand it to you. You said in your direct testimony that as part of your training you had been given a memo from Eades Hogue. And my question is: Is this the memo you received?

(DOCUMENT TENDERED TO WITNESS)

A. In my memory, it looks to be the memo I received.

Q. Now, in the court file there is only one page. Do you remember if it was a one-page memo or whether it was a longer memo?

A. I was given a one-page memo.

Q. You got a one-page memo and you think that's it.

A. That's it. Looks like to be it.

MR. WALLACE: No further questions, your Honor. Thank you.

THE COURT: Are you offering that in this record?

MR. WALLACE: No, ma'am, I'm not offering it into evidence. I just didn't want to have to go out to California to ask her what it was. Thank you.

MS. McDANALD: Plaintiffs would like to offer it into

1 evidence, though.

2 MR. WALLACE: I don't think it is evidence, your
3 Honor, not of anything I know of yet.

4 MS. McDANALD: It was enough to be brought up, and it
5 is now a party opponent admission. He has cross-examined the
6 witness on that document.

7 THE COURT: We're talking about the one-page training
8 document? What was the number? I missed it. 25-4, I believe?

9 MS. McDANALD: 25-2 of the record.

10 STAFF ATTORNEY: 2.

11 THE COURT: 2.

12 MR. WALLACE: But if they want it in, your Honor, I
13 don't have any objection to it being in.

14 THE COURT: Okay. 25-2, the -- is that in the bill of
15 particulars?

16 MR. WALLACE: It's in the bill of particulars. 25-2
17 is an exhibit to the bill of particulars.

18 THE COURT: What tab? I have a version that doesn't
19 have the ECF stamp on it.

20 MR. WALLACE: It is a part of Exhibit 12, I think. I
21 don't know if they gave you tabs.

22 THE COURT: I do have that. Let me see. The
23 memorandum from Eades Hogue to Catherine Engelbrecht?

24 MR. WALLACE: Yes.

25 THE COURT: On the Beirne Maynard counsel stationery?

1 MR. WALLACE: Yes, ma'am.

2 THE COURT: July 6th memo?

3 MR. WALLACE: That's the sheet I was looking at. Yes,
4 ma'am.

5 THE COURT: Okay. One page? All right. You want --
6 okay. You're offering that one page?

7 MR. WALLACE: I'm not, but she is. And there's no
8 objection.

9 THE COURT: Sorry.

10 MS. McDANALD: Yes, your Honor. That would be
11 Plaintiffs' Exhibit 12.

12 THE COURT: For Madison County? Are you offering the
13 one page or are you offering the whole two-page document that's
14 been provided to me?

15 MS. McDANALD: Since the one page was the only that
16 was brought to the stand and cross-examined by the witness,
17 then just the one page.

18 THE COURT: Okay. Then we need a clean copy. Who has
19 a clean copy? We'll make a copy and we'll make it Plaintiffs'
20 Exhibit 12.

21 (EXHIBIT P-12 MARKED)

22 MR. SANDERS: Your Honor, if I may inquire, you said
23 it was two pages. I thought the witness --

24 THE COURT: Well, I have -- in the bill of particulars
25 under tab 12 --

1 MR. SANDERS: Oh, okay.

2 THE COURT: -- I have the cover letter.

3 MR. SANDERS: But the memorandum is just one page.

4 Right?

5 THE COURT: Yes.

6 MS. McDANALD: I'm happy to admit it all.

7 MR. WALLACE: What's the question?

8 THE COURT: No. For the purposes of the questioning,
9 it was one page, and that's what I'm going to receive. That's
10 the only relevance. The rest of it isn't, at least at this
11 point. The foundation was laid on the second page.

12 MS. McDANALD: Right.

13 THE COURT: So that's what I'm receiving. All right.
14 Anything further for this witness? Plaintiff?

15 MS. McDANALD: Brief redirect.

16 **REDIRECT EXAMINATION**

17 BY MS. McDANALD:

18 Q. Earlier you testified that there was a \$100 charge for a CD
19 of voter registering information from Leake County. Why did
20 that seem high to you?

21 A. I work in California, as you know, in the election area.
22 We recently purchased, for example, 18 million voting records,
23 which is the entire state of California, with expanded database
24 and with voting history on a disk for \$30.

25 Q. And I believe there are not 18 million residents in

1 Mississippi.

2 A. Not in Leake County.

3 Q. And not in Leake County.

4 A. No.

5 Q. Also on cross-examination you testified how you were told
6 on a Tuesday to come back on Monday by Covington County Circuit
7 Clerk.

8 A. Yes.

9 Q. Did you also tell the circuit clerk that you live in
10 California?

11 A. Yes. When we introduced ourselves, we told her we were
12 from California.

13 MS. McDANALD: No further questions.

14 THE COURT: Okay. Anything further? Okay. Thank
15 you, ma'am. You may step down.

16 A. Thank you, your Honor.

17 MS. McDANALD: Plaintiffs would like to call Julie
18 Patrick.

19 MR. SANDERS: And, your Honor, I understand the
20 court's previous rulings on this issue, but the declaration
21 Ms. Patrick has given indicates she wants to talk about Tunica
22 County. Just for the record, we would object to that.

23 THE COURT: Forgive me.

24 MR. SANDERS: I appreciate the court's ruling on this
25 issue --

1 THE COURT: I don't even know what the lady is going
2 to testify about. What's your objection? If you'd restate
3 that objection.

4 MR. SANDERS: Her declaration that we received
5 indicates she wants to talk about events in Tunica County, a
6 nondefendant here, a nonparty. So we object to that.

7 THE COURT: Okay. Yeah. I'm going to allow her to
8 testify to the extent she asked for documents.

9 (WITNESS SWORN)

10 THE COURT: Please be seated. Would you state and
11 spell your whole name for the record, please.

12 THE WITNESS: Julie Patrick, J-U-L-I-E, P-A-T-R-I-C-K.

13 THE COURT: Thank you. You may proceed.

14 **JULIE PATRICK,**

15 having first been duly sworn, testified as follows:

16 **DIRECT EXAMINATION**

17 BY MS. McDANALD:

18 Q. Julie, are you a resident of Mississippi?

19 A. Yes, I am.

20 THE COURT: We're trying to go by last names, please.

21 BY MS. McDANALD:

22 Q. Ms. Patrick, are you a registered voter?

23 A. Yes, I am.

24 Q. How long have you been a registered voter in Mississippi?

25 A. I became a resident and a voter of Mississippi in September

1 of 1996.

2 Q. And what county in Mississippi do you live?

3 A. I live in Marshall County.

4 Q. And as a resident of Marshall County, do you serve on any
5 executive committees of Marshall County?

6 A. Yes, I do. I became involved in the Republican Party as an
7 executive county member at the caucus of 2012.

8 Q. Earlier when Ms. Turner was testifying about executive
9 committees having a role in elections, did you understand that
10 to -- testimony to be party executive committees?

11 A. Yes. I was concerned that -- they were saying that -- that
12 it was actually the counties that had complete control and that
13 the finger was being pointed back at us at the way that the
14 county had run the primary and the runoff election.

15 Q. But it's not just the Marshall County Executive Committee.
16 It would be the Marshall County Executive Committee of a
17 Republican party or a Democratic Party or any other party that
18 decided to join the party. Is that correct?

19 A. Would you repeat that?

20 Q. Yes.

21 THE COURT: A question, short.

22 MS. McDANALD: Sure.

23 BY MS. McDANALD:

24 Q. A county's executive committee, are those related to a
25 government role or are they a party role?

1 A. It's a party role.

2 Q. Okay. Have you voted in any elections recently?

3 A. Yes, I have.

4 Q. And what election would that be?

5 A. That would be the most recent, June 3rd primary and then
6 the runoff June 24th.

7 Q. And in your role as a member of the Republican Party
8 Executive Committee for Marshall County, did you have any
9 responsibilities in connection with that election?

10 A. Yes. Shortly after --

11 Q. And what would those be?

12 A. Okay. Yes. Shortly after the -- I became a member of the
13 executive committee, I was nominated and voted to be the
14 chairperson within six months of joining the party as the
15 executive -- as an executive member. So --

16 Q. What year was that?

17 A. That was 2000- -- that was 2012.

18 Q. Okay.

19 A. Yes. So I was told that my primary role would be to run
20 the primary. And so when I was given this duty, I started to
21 investigate how I was supposed to do this. And I was told that
22 we had always signed with the election commissioners a contract
23 for them to run it for us.

24 Q. Okay. And have you done anything since the election to
25 follow up on the election results?

1 A. Yes, I have. We -- we had retained the rights of
2 certification of the vote. So shortly after the June 3rd, I
3 was -- had the first experience of what it was to canvass the
4 vote and then sign the certification, which we did on a
5 Wednesday following the June 3rd primary.

6 We canvassed the vote the day afterwards, and then we
7 waited for the voter -- the photo ID affidavits to come in.
8 And then we signed the certification at that point. So I had
9 become familiar with what was supposed to be in ballot boxes
10 and how they were sealed. That was basically led by the hand
11 by our circuit clerk, Lucy Carpenter.

12 Q. Sorry. When you say, "We retained the right to certify the
13 vote," who are you talking about when you say "we"?

14 A. The committee for Marshall County.

15 Q. And in that role were you able to review the ballot box
16 materials?

17 A. Yes. I was able to review it for Marshall County, and then
18 I -- also as the committee chairperson, I had seen that there
19 was some deep concerns following the runoff. And I was
20 contacted by members of my committee that told me not to
21 certify the vote, that they were concerned that there was too
22 much irregularities.

23 And so I relayed those concerns to our circuit clerk. And
24 we delayed until -- to canvass the vote until such a time that
25 it was Monday following the election at which time I also had

1 the opportunity to look at the poll books. It was a very brief
2 run-through just to see if there was any cross-voting. So I
3 did actually look at the poll books there.

4 And then following looking at the poll books, I went back
5 for -- on behalf of the McDaniel campaign to do a poll book --
6 I mean -- I'm sorry -- a poll box review. And we were told
7 that I would not be allowed to do that for Marshall County.
8 The next day I went to Tunica County and was able to review the
9 poll boxes in Tunica.

10 THE COURT: I'm missing something. You went back to
11 the county -- to Marshall County --

12 A. On behalf of the --

13 THE COURT: -- to review poll boxes?

14 A. Yes, the poll box --

15 THE COURT: What is that?

16 A. That is the boxes that were to be sealed.

17 THE COURT: The sealed --

18 A. Right.

19 THE COURT: The ballot boxes was referred to --

20 A. Yes. I'm calling the them poll boxes, but ballot box is
21 correct.

22 THE COURT: Okay. And you said -- they told you what?

23 A. I was told that because I was the chairperson on the
24 executive committee, the circuit clerk called the Secretary of
25 State's Office and confirmed that I would not be allowed to be

1 there on behalf of the McDaniel campaign. I would not be
2 allowed to review the poll books. In fact, I was told there
3 would be no poll books that would be reviewed at that date and
4 I would not be able to look at any of the absentee ballots.

5 THE COURT: Okay. What does this have to do with this
6 case?

7 MS. McDANALD: I'm getting to the request that she
8 made to review documents and absentee --

9 THE COURT: Then let's go there. She's part of the --
10 she was challenging on behalf of the McDaniel campaign. And as
11 I understand her testimony, the testimony was that as an
12 official of the party that sponsored the election, she's
13 supposed to essentially be neutral and not be taking a stand or
14 whatever, challenges for one side or the other. But what does
15 that have to do with this national statute I'm worried about?
16 You don't have to answer. I just want you to get to something
17 that has to do with the national statute. I'm not here to
18 worry about state law and the stuff about the McDaniel campaign
19 or any other campaign. Okay?

20 I guess I should be not looking at you. I'm sorry. I
21 should be looking at you. The facts are the facts. I respect
22 that. I just want you to understand, I only care about the
23 federal statute -- that's where I am -- and how it interplays
24 with the state statute. Okay?

25 A. Right.

1 THE COURT: So let's see if we can get to that
2 subject.

3 A. Okay.

4 BY MS. McDANALD:

5 Q. Outside of your role as a member of the executive committee
6 for Marshall County and just as Ms. Patrick, Ms. Patrick, have
7 you requested records, either poll books or access to absentee
8 applications or the absentee application envelopes which carry
9 the ballot in it, have you requested access to those sort of
10 documents and been denied by a county?

11 A. Yes, I have.

12 Q. Which county?

13 A. Both Marshall County after the initial canvassing the vote
14 and then also in Tunica County.

15 Q. Turning to Marshall County, when -- was your request to
16 review documents made after the runoff election?

17 A. Yes, it was.

18 Q. Was your request made to the Marshall County Circuit Clerk?

19 A. Yes, it was.

20 Q. Was your request made in writing --

21 THE COURT: Let's split that. Let's -- non-leading.

22 BY MS. McDANALD:

23 Q. Was your request made in writing or was it verbal?

24 A. It was verbal.

25 Q. What response did you receive?

1 A. My response was that the circuit clerk had been directed by
2 the Secretary of State's Office that those would not be made
3 available.

4 THE COURT: I'm sorry. What were you trying to see?
5 Poll books?

6 A. Poll books.

7 THE COURT: And when was that?

8 A. That was --

9 THE COURT: I know it was --

10 A. I guess that was June the -- it was the -- I'm trying to
11 remember. Was that June -- July the 7th. That was --

12 THE COURT: Okay.

13 A. -- a Monday.

14 THE COURT: July 7th was Monday?

15 A. Yes.

16 THE COURT: Okay. And you were there in your personal
17 capacity or your Republican chairman capacity --

18 A. I was --

19 THE COURT: -- for Marshall?

20 A. I was actually there for the ballot box review.

21 THE COURT: Which was the campaign.

22 A. Yes.

23 THE COURT: Okay. Thank you. This is on Monday, the
24 7th.

25 A. Yes.

1 THE COURT: Okay. What's the next question?

2 BY MS. McDANALD:

3 Q. Were you able to receive copies of the poll books?

4 A. No, I was not.

5 Q. What was the reason you were not provided copies of the
6 poll books?

7 A. I was just simply told that they would not be made
8 available. I was not given an offer to purchase them for after
9 redaction. I was just told they would not be made available
10 today, but they might be for a private request, individual
11 request, but would not be allowed during the ballot box review.

12 Q. Okay. Have you made any subsequent requests to review the
13 poll books from the Marshall County Circuit Clerk?

14 A. No. It was my understanding that somebody else from the
15 campaign was taking over, and then I went over to Tunica County
16 at that point.

17 Q. In Tunica County have you made any requests for inspection
18 of documents?

19 A. Yes, I did.

20 Q. Where was that request made?

21 A. That was made at the circuit clerk's office there in
22 Tunica.

23 Q. And what documents did you specifically request to review?

24 A. I requested to review both the poll books and the ballot
25 box.

1 Q. What was the -- was the request made oral or was it in
2 writing?

3 A. It was oral.

4 Q. And who was the request made to?

5 A. It was made to Sharon Reynolds, the circuit clerk, and then
6 the next day also to the deputy clerk. And I don't recall her
7 name.

8 Q. Sorry. Do you recall the date that the requests were made?

9 A. That was the next day after. So that would be July the 8th
10 and July 9th.

11 Q. What was the response to your request?

12 A. We were led into the room to review the ballot boxes, at
13 which point we discovered that they were not sealed. And again
14 we were told we would not have the poll books made available
15 during the review.

16 So we discovered that the ballot boxes were almost empty
17 and in some cases there was no sign-in sheets. There was no
18 poll-worker tally sheets. All the affidavit ballots were
19 removed. And there was -- there was absentee ballots that were
20 in some of the boxes that still had the -- that still had the
21 votes inside, the ballots. They were -- they had been opened,
22 but the ballots had not been removed.

23 And so -- and the problem with not having the poll-worker
24 tally sheet is I was not able to see where -- how many ballots
25 were rejected or accepted. It was just there was no tally

1 sheet to be able to compare. So we had to do a bit of
2 investigative work. And I had to request the sign-in sheets
3 that were brought in to me separately that should have been in
4 the ballot boxes sealed. And then the poll-worker tally sheets
5 were gone. And I asked who had removed all these -- all these
6 records.

7 MR. PIZZETTA: Objection, your Honor. Relevance.
8 Many of those are not NVRA documents.

9 THE COURT: Okay. Move on.

10 BY MS. McDANALD:

11 Q. I think I discussed the situation involving the ballot
12 boxes. From Tunica County were you able to review the poll
13 books?

14 A. No, I was not.

15 Q. And was an offer made to you that you could ever review the
16 poll books?

17 A. Not -- no, not in Tunica County. In Marshall County I was
18 told that as a private citizen I could come back and request
19 those.

20 Q. And when you came back and -- did you ever ask any
21 questions about whether or not birth date information would be
22 provided along with the poll books?

23 A. I was not told why they were not allowing us to look at the
24 poll books at that time, and I just felt like that was up to
25 the campaign attorneys to sort that out.

1 Q. Sure. But Tunica County just flat refused your request to
2 review the poll books?

3 A. That's correct.

4 Q. So you were not told to come back to Tunica County to
5 request them again.

6 A. No, I was not.

7 MS. McDANALD: No further questions. Pass the
8 witness.

9 THE COURT: Okay. Who's going to cross?

10 MR. WALLACE: I have a quick question, your Honor.

11 **CROSS-EXAMINATION**

12 BY MR. WALLACE:

13 Q. The court asked you in what capacity you went to these
14 counties. I'm going to read to you from Section 23-15-911 of
15 the Mississippi Code, which says that "After the election, any
16 candidate or his representative authorized in writing by him
17 shall have the right of full examination of ballot box." When
18 you went to Marshall County, were you a representative
19 authorized in writing by Senator McDaniel?

20 A. Yes, I was.

21 Q. And were you acting in that same capacity when you went to
22 Tunica county?

23 A. Yes, I was.

24 MR. WALLACE: No further questions, your Honor.

25 THE COURT: Anything further? I think you better

1 quit. If you have something more pertinent, you may proceed.

2 MS. McDANALD: No, your Honor. Thank you.

3 THE COURT: Thank you. Anybody have anything else?
4 Okay. Thank you all. Ma'am, you're excused. Anything further
5 from plaintiffs?

6 MR. NIXON: We have no other witnesses, your Honor,
7 for you today.

8 THE COURT: Okay. Thank you. So the plaintiffs rest,
9 I take it.

10 MR. NIXON: Yes, your Honor. Thank you.

11 **PLAINTIFF RESTS**

12 THE COURT: Defense witnesses, other evidence?

13 MR. PIZZETTA: Your Honor, we're not going to call our
14 witness. We think Ms. Turner answered the questions on --

15 THE COURT: Okay. Counties, any other witnesses? No?
16 I'm seeing all the heads shaking left to right. Republican
17 Party?

18 MR. WALLACE: The Party has no witnesses, your Honor.

19 THE COURT: Okay. Then the hearing record is closed.
20 I don't believe there are any documents that we're owed as
21 exhibits. I know I did leave open the question of the bill of
22 particulars; and in light of what I've received so far in
23 evidence during this hearing, I think that I'm going to sustain
24 the objection as to lack of foundation on the documents in the
25 bill of particulars that was not -- to the extent those

1 documents have not been offered at this hearing.

2 I have exemplars of the documents that True the Vote
3 prepared, the incident reports and everything else. I don't
4 see any prejudice here. I've got the testimony to the extent
5 that there -- requests were made by citizens asking for
6 information. To the extent that there are party
7 representatives or party -- or candidate representatives, I
8 question the relevance of that. To the extent you have a view,
9 you can comment.

10 But, anyway, is there any -- in light of that ruling,
11 is there anybody that wants to offer anything else in the way
12 of documentation? I'm really not comfortable, Mr. Nixon,
13 receiving True the Vote complaint or incident reports without
14 authentication in light of some of this.

15 MR. NIXON: I laid the foundation, at least I thought
16 I did, with Ms. Engelbrecht with regard to them being business
17 records.

18 THE COURT: But they contain all sorts of hearsay
19 within the business records. And they're incident reports.
20 This is not an ongoing business where there are employees
21 creating records at or about the time of the event for the
22 purpose of business ongoing. These are the equivalent of
23 accident reports. They really are. And there's a qualitative
24 difference between accident reports, investigation-type
25 reports --

1 MR. NIXON: Right.

2 THE COURT: -- and typical business records. So I
3 respect your point of view. I'm not willing to accept those
4 records now. If that should become an issue, then we'll deal
5 with it down the road.

6 MR. NIXON: Well, as the court knows, one of the
7 reasons why we have provided them to everybody is that they
8 exist. And they certainly give everybody -- I mean, they were,
9 in fact, created.

10 THE COURT: Correct.

11 MR. NIXON: And the court asked for *Tell us what you*
12 *have.*

13 THE COURT: And I view it in the form of discovery.
14 So I appreciate very much your turning this material over. It
15 is important that it be produced. My problem is -- well, let
16 me say this. I will take notice, and I'm aware of the Redwell
17 full of incident reports in folders. You want to tell me how
18 many there are, fine.

19 But I am not prepared to just receive massive amounts
20 of hearsay when I know from the record that's being created
21 here that some of the people are party representatives and
22 candidate representatives and some are out-of-towners. So you
23 have different circumstances and different bases for the
24 requests. So I am not going to just take into the record these
25 20, 30, 50, whatever it is, incident reports without any

1 foundation. I'm just not doing it. Okay.

2 MR. NIXON: And I really don't have a problem with
3 that. The burden under the NVRA is did you make a request and
4 did they comply.

5 THE COURT: Right. There's a consistency to the
6 responses. And I think you've made enough of a record that we
7 know that at least these eight counties are aware of the ones
8 that you made requests of that are in this record are. We know
9 where the State is. Most of the counties' people said, at
10 least by report, *The State said I shouldn't produce this stuff.*
11 So --

12 MR. NIXON: I'm fine.

13 THE COURT: -- I think it's cumulative in that respect
14 also.

15 MR. NIXON: I agree.

16 THE COURT: Okay.

17 MR. NIXON: But I will provide --

18 THE COURT: If that turns out to be the seminal fact,
19 I'll let you deal with it. We'll have another conference and
20 I'll deal with it.

21 MR. NIXON: But I will provide them all.

22 THE COURT: Thank you.

23 MR. NIXON: Because they do exist and everybody ought
24 to have them. We have nothing, but Let's take a look at the
25 whole thing.

1 THE COURT: I've already seconded that. I'm expecting
2 that. That was something we agreed on earlier. So yes. But
3 that's different from putting it in this record. That's my
4 point. Okay.

5 I'll hear some argument from each side on exactly what
6 it is plaintiffs want and what it is in their statutory
7 analysis, and then I'll hear from defense. The State can go
8 first and then any county that wants to supplement and the
9 Party may do that. Let's start -- it's 4:04. Do you want a
10 break? Yeah. Okay. Break it is.

11 MR. PIZZETTA: Your Honor, for planning issues, trying
12 to figure out where we go with all of this. Are you
13 anticipating briefing on this in the short time, or oral
14 argument today is our only shot at telling the court?

15 THE COURT: No. I want some oral argument, but I had
16 told you that you would have a chance, another week or so. I
17 said -- in the conference I said two to three weeks. But I had
18 figured two, give or take a couple of days, for briefing.

19 But, yes, I did want some argument today because I'm
20 assuming the parties think this is something I should get
21 cracking on. And, therefore, I'd like a heads up. Frankly, I
22 know where plaintiff is -- or plaintiffs are. I'm not sure
23 where the defense is in light of some of the authority
24 plaintiffs have cited.

25 MR. PIZZETTA: Very well. I just wanted to make sure

1 it wasn't our only shot. I'll proceed with that.

2 THE COURT: It's very much not your only shot. But I
3 do expect you're going to come up with a briefing schedule. I
4 think I had left that with you that maybe you'd have a
5 suggestion on that. All right. Let's take a ten-minute break.
6 Okay.

7 MR. NIXON: Will we argue first or will the defense?

8 THE COURT: I'll give you rebuttal because they're
9 going to raise other issues probably.

10 MR. NIXON: Thank you, your Honor.

11 (RECESS)

12 THE COURT: Please be seated. Okay. How much time do
13 you think you'll take? Is it you, Mr. Nixon, that's going to
14 do the argument?

15 MR. NIXON: Yes, your Honor.

16 THE COURT: How much time? You're going to get
17 rebuttal because I know the defense will argue things that you
18 won't have raised. And you have a lot of briefing. So I just
19 want to know what you're thinking.

20 MR. NIXON: I think ten minutes or less.

21 THE COURT: Okay.

22 MR. NIXON: And, hopefully, I can give you back some
23 of the time.

24 THE COURT: All right. Let me say to you in the
25 spirit of telling you what I'm interested in, I need to

1 understand, among other things, why exactly you think that
2 certain -- each of the types of materials are important to you
3 from the perspective of the statutory scope of the, you know,
4 publicity or whatever it's called, the public disclosure
5 provision? Okay? Keep that in mind as you argue. Thank you.
6 And you may proceed whenever you're ready.

7 **ARGUMENT ON BEHALF OF THE PLAINTIFFS**

8 MR. NIXON: Thank you, your Honor. May it please the
9 court, counsel. Judge, thank you so much for hearing us and
10 giving us way more than the allotted time that we were all
11 anticipating. It's clearly a recognition of the significance
12 of this case.

13 THE COURT: I think you might want to thank the
14 defense, because it became clear they were going to take less.

15 MR. NIXON: Thank you all. Thank you all. Thank you.
16 We have been -- people in Mississippi have been very gracious
17 hosts, and I thank them for all of that.

18 Let me remind everybody and sort of bring us back to
19 really why we're here. This is a fundamental basis of
20 democracy. It starts with the ability of people to vote, to
21 establish who governs them, what public policy is created, how
22 they choose to live together. It's the heart of democracy.
23 It's the core public function, particularly in our country. It
24 is the bedrock on which all other democratic principles are
25 based.

1 Former President Carter and Senator Baker got together
2 and did a study of voting in America. And one of the
3 conclusions they reached was we need to do everything to
4 protect the validity of elections because, as President Carter
5 wrote, if elections are defective, our entire democratic system
6 is at risk. So a public debate was held in the early '90s
7 culminating in the passage by Congress of the National Voter
8 Registration Act.

9 The debate weighed various public policy interests and
10 came to the conclusion that certain things must be made public
11 and that citizens should have a private right of action in
12 order to protect the integrity of the fundamental core of our
13 democratic system, elections. The issue of what private
14 information could be made public and how that balanced against
15 election integrity was debated and decided and culminated in
16 the passage of the National Voter Registration Act and then the
17 regulations that came about afterwards.

18 Birth dates were debated. Social Security numbers
19 were debated. And it was determined that birth dates were
20 going to be made public in the protection of voter integrity.
21 That information is required by each state to be collected and
22 made public as part of the registration process. That's
23 11 CFR 9428.4. That issue has been -- it's clearly determined
24 for us today.

25 One of the things that I thought was very interesting

1 is that the Secretary of State, Ms. Turner, when asked, *May I*
2 *receive voter registration applications with birth dates*
3 *unredacted?* she said yes. I can have that information now.
4 Anyone can request that of any state. That's public record
5 today.

6 The concept that we -- that the State of Mississippi
7 is not going to allow birth dates to be released as relates to
8 voter rolls when they're releasing everything else and I can
9 obtain that information through another request, the idea we're
10 here to protect the privacy rights of the citizens of the state
11 of Mississippi rings hollow, particularly in light of the fact
12 that this was -- has been previously debated and decided as a
13 matter of national public policy.

14 More importantly and thankfully for this court, this
15 issue has already been decided by the Fourth Circuit. The
16 Fourth Circuit held in *Vote for America v. Long* that birth
17 dates are to be produced; that Social Security numbers are not.
18 But we're not asking for Social Security numbers. We're asking
19 for the information.

20 And so, really, as it relates to the National Voter
21 Registration Act claim that has been asserted by the
22 plaintiffs, the plaintiffs needed to prove two things -- and
23 they are clearly undeniable -- that they made a request and the
24 request was denied.

25 And I think it's important and I want everybody to

1 note and I think that all the plaintiffs' witnesses said or
2 inferred everybody was very polite. This is not an issue.
3 There's no acrimony. There's no malicious intent. There's no
4 nefarious undertone. It's that the counties believed and the
5 people who denied the requests believed they were doing the
6 right thing. They thought they were acting correctly.

7 That's okay. That's why -- I've only knocked that off
8 three times -- that's why we're here. That's why we have this
9 ability to come in a peaceable setting and discuss this issue.

10 Now, the Fifth Circuit has cited the *Long* case twice
11 on different basis, but approved the decision.

12 THE COURT: The *Steen* case really, really factually is
13 so distinguishable that --

14 MR. NIXON: Right. That's right.

15 THE COURT: -- I'm not sure we should spend a lot of
16 time on it.

17 MR. NIXON: Nor do I want to, other than the fact that
18 the Fifth Circuit acknowledged *Long* and said this is what
19 they -- this is, you know --

20 THE COURT: All those guys are buddies. I'm just
21 teasing.

22 MR. NIXON: But the -- but I point to those cases
23 because I think they're very helpful for the court. You don't
24 have to plow new ground. You don't have to decide anything
25 different. You have to simply acknowledge this is what was

1 done.

2 And the Fourth Circuit case, the *Long* case, I think
3 was well reasoned. And we cited a very -- very appropriate
4 public policy statement out of there: We, the Fourth Circuit,
5 aren't going to change the public policy of the country. That
6 issue's been decided for us. We have to just simply
7 acknowledge it.

8 And that's all I'd ask this court to do is to
9 acknowledge the public policy of the country, that Congress
10 decided that birth dates are an important identifier. We don't
11 have to rehash, we don't have to reagree, we don't have to
12 reprove why. We just have to acknowledge that they are. We
13 have acknowledge that the information is totally publicly
14 available even through the Secretary of State's Office which
15 doesn't want to produce it.

16 But, more importantly, here's why we're here. True
17 the Vote has a private right of action. They have an
18 informational injury. It's totally recognized. It's exactly
19 the same claim that was brought by Project Vote/Vote for
20 America.

21 The court is also, I'm certain, very -- is very clear
22 of the problem that we have in Mississippi. Every single
23 county does what it does in its own way. And as the Secretary
24 of State testified, this is a bottom-up situation.

25 Well, the National Voter Registration Act contemplated

1 this problem and said, no, every state's got to designate a
2 chief elections officer. Mississippi acknowledged that and in
3 Mississippi Code 23-15-211-1 made its own Secretary of State
4 the chief elections officer for compliance.

5 What we have here -- and it was completely obvious --
6 is that, as my dad used to tell me, "Son, that's not a reason.
7 That's an excuse." What we have here is an excuse. *I don't*
8 *have the records today. They're over here. But then, I don't*
9 *have them. You sued me here, but you shouldn't have sued me*
10 *over here. Everybody's got a reason why they shouldn't be in*
11 *this case. But everybody at one point had their hand on the*
12 *poll books, had their hand on the voter roll. But no one wants*
13 *to be ultimately responsible for the production of those*
14 *documents.*

15 Well, the National Voter Registration Act is very
16 clear. "Each state shall maintain for at least two years and
17 make available for photocopying at a reasonable cost all
18 records," not just some, not just the ones you think are
19 appropriate, "all records concerning the implementation of
20 programs and activities conducted for the purpose of
21 ensuring" -- and here's the key words -- "the accuracy and
22 currency of official eligible voting."

23 That's a broad term, and here's what it means. It
24 means the voter rolls. It means the voter poll book, Exhibits
25 D-6 and D-5, where it's indicated -- that's only the active

1 voters, because all of that is used to ensure the currency and
2 accuracy of eligible voting. And whether you get the V-28's
3 (sic) or whether the parties switch them, those books are used
4 to determine the eligibility of someone to vote in a runoff
5 election and the accuracy of the eligibility of voters.

6 The absentee ballot provisions in Mississippi are
7 restrictive, unlike Texas where we just have a broad period and
8 anyone can show up. Not here. You have got to have a reason,
9 statutory reason. Age is one of the reasons. Birth dates
10 matter. There's a lot of other reasons, but you've got to fill
11 out the form. And then looking at the form at the reason why
12 you want to vote determines the accuracy and the eligibility of
13 the person to cast an absentee ballot. The envelope signatures
14 have to match the application which has to match, in fact, the
15 application to register. That's why it's all necessary.

16 And when asked, *Well, what about the overseas ballots*
17 *that are only governed by federal statute, it's only a federal*
18 *application?* She said, *Sure.*

19 *Do they contain birth dates?*

20 *Absolutely.*

21 *Can I see them?*

22 *Yes, you may, unredacted, of course.*

23 This is a hide -- hide the shell game, and that's
24 not -- that flies in the face of everything about making sure
25 voting is done fairly, accurately and the election is valid.

1 If you don't do that, if you don't ensure valid elections, you
2 encourage invalidity. You encourage fraud.

3 Now, I want to make sure I touch on the points that
4 you mentioned.

5 (COUNSEL EXAMINED DOCUMENT)

6 MR. NIXON: Okay. We talked about poll books and the
7 other information. There's five things that we want. The
8 voter rolls, the poll books, the absentee ballot applications,
9 the absentee ballots envelopes and the overseas applications to
10 vote.

11 THE COURT: You want absentee ballot --

12 MR. NIXON: Applications.

13 THE COURT: -- applications and envelopes.

14 MR. NIXON: Yes. Voter roll.

15 THE COURT: Applications and envelopes.

16 MR. NIXON: The application for the absentee ballot
17 and the envelope. Now, if it -- if it helps the court, most
18 all of this information is available currently from the
19 Secretary of State in their SEMS system that can be printed out
20 and handed to us in a disk.

21 THE COURT: Correct. There's no question about that
22 after the fact, after a certain number of weeks or months after
23 an election. Your people went in immediately after the
24 election, sometimes three days, other times a couple of weeks.
25 And they demanded what I perceived to be -- maybe I'm wrong and

1 you're welcome to correct me, but what I perceived to be very
2 burdensome requests before stuff was computerized.

3 And so that's -- that I think is some of the concern,
4 right or wrong. I mean, you can't get blood from a stone. And
5 when the people who want to start making all these demands want
6 to start paying for this labor, fine. But right now -- I'm
7 sure it would be better if it was computerized more quickly,
8 and hopefully that will be the -- will come in soon, in short
9 order, but --

10 MR. NIXON: The poll books were on computer before the
11 election.

12 THE COURT: The poll books were on computer --

13 MR. NIXON: The overall poll books.

14 THE COURT: Yes, yes.

15 MR. NIXON: The voter rolls. The voter rolls.

16 THE COURT: The voter rolls, yes. The poll books
17 probably were too. That's the true.

18 MR. NIXON: Right.

19 THE COURT: But they're not -- as I understand it, the
20 indication of who voted, which I don't think is -- goes to
21 eligibility unless there's a runoff --

22 MR. NIXON: That's --

23 THE COURT: That is there's a runoff a primary --

24 MR. NIXON: Which is why we're here.

25 THE COURT: Right. Right. Do you concede that the --

1 what would be necessary to determine eligibility of voters on a
2 current basis is in part -- and it may be at the margin, but in
3 part dependent on what the election is that's -- you're
4 upcoming or otherwise?

5 MR. NIXON: Absolutely no. If you recall, the
6 Secretary of State said that a V-28 -- it is the Secretary of
7 State's recommended procedure that a V-28 report be run before
8 the runoff election.

9 THE COURT: Right.

10 MR. NIXON: So who voted -- so when we went --

11 THE COURT: That's three weeks; it's not three days.

12 MR. NIXON: No, but we didn't ask right after the --
13 we didn't ask for that information until after the runoff. So
14 on June 24th there was a runoff. We -- and the V-28 was
15 printed --

16 THE COURT: Right.

17 MR. NIXON: -- and available. Either they print it or
18 they switch poll books. But, remember, the recommended deal is
19 to run a report and then just hand everybody a report.

20 THE COURT: Right.

21 MR. NIXON: So, no, I don't agree that that
22 information is available at the time of the election. We're
23 asking for information now -- June 24th to July 7th. We're
24 asking for two weeks later.

25 THE COURT: Okay. But I think my question was

1 unclear. I understand why the poll books from the primary are
2 necessary in order to determine eligibility for the runoff.

3 MR. NIXON: Yes.

4 THE COURT: And putting aside preelection versus
5 postelection, because, obviously, this has got to do with
6 election challenges in the longer run, but that's not what the
7 statute says. The statute says eligibility -- it says currency
8 of official list of eligible voters.

9 MR. NIXON: Yes, ensuring the accuracy and currency of
10 official list of eligible voters.

11 THE COURT: Right.

12 MR. NIXON: And that -- and here's -- the point is
13 further brought home. No one's saying we can't have the
14 information. No one's saying it's too hard to produce. They
15 just said, *We don't want to produce it with birth dates.*

16 THE COURT: Well, okay. I'll hear from them on that.

17 MR. NIXON: Fine. So, I mean, so when you -- really,
18 the things that we want, we asked for, weren't burdensome, are
19 available that they can just give it to us on a disk in a short
20 amount of time, which is how we -- how True the Vote would
21 prefer to have it anyway.

22 THE COURT: Why is a polling book -- give me the --
23 give me the chronology and the context for why a polling book
24 is necessary to determine currency of official lists of
25 eligible voters after an election?

1 MR. NIXON: The polling book is crucial if there's a
2 runoff.

3 THE COURT: That's the point.

4 MR. NIXON: And there was.

5 THE COURT: That is precisely the point. When there's
6 a runoff, absolutely, I understand your position. When there's
7 not a runoff, I'm trying to figure it out.

8 MR. NIXON: Well, what happens when there's not a
9 runoff, that information is received back eventually to the
10 county -- to the circuit clerk.

11 THE COURT: And it goes to that -- it goes to that,
12 whatever it is, 128, you know, the unofficial and it goes up to
13 the voter --

14 MR. NIXON: The voter rolls. And then from the
15 Secretary of State Office you say, *May I please have a printout*
16 *of your voter rolls?* --

17 THE COURT: Correct.

18 MR. NIXON: -- which includes who voted in the last
19 election, and that's all done within days. I mean, the
20 Secretary of State said --

21 THE COURT: It has to be certified I think.

22 MR. NIXON: Right, they have to certify it. But what
23 happens here and it's -- and the request -- remember as we
24 started today, the requests are made in order to determine the
25 validity of the election, because here's what we do. If we

1 create a system where no one can look --

2 THE COURT: No one can what?

3 MR. NIXON: -- can look at the records in a timely
4 fashion in order to question the validity of the election, we
5 invite fraud because elections can't ever be questioned.

6 THE COURT: Right.

7 MR. NIXON: So the urgency is people are going to have
8 a right. That's why the whole NVRA scheme was created.

9 THE COURT: All right.

10 MR. NIXON: And that it is held by the Secretary of
11 State and available who voted, when they voted, which party
12 they -- primary they voted in, how many times the last --
13 that's all ready available. And so the only -- the only
14 argument here is you can have it; you just can't have it with
15 birth dates. But birth dates has been -- that fight had
16 been --

17 THE COURT: I heard this again. But why are birth
18 dates so important to you when there is no question about the
19 name and the county or whatever?

20 MR. NIXON: It is -- there are only -- when you have
21 so many people, millions -- some states have -- like
22 California, 18, Mississippi maybe 8-, 700,000, maybe a million
23 registered voters. The problem with names and addresses,
24 people move and you don't always -- you know, there's a
25 national database to try to catch up with folks, but we all

1 know that it's -- and so the one identifier, the one
2 identifier -- and it is not uncommon --

3 THE COURT: But here's the point. The combination of
4 birth date, name, and address is a prescription for -- if the
5 information is released --

6 MR. NIXON: It's a public record now.

7 THE COURT: It's harder to get. And the point is that
8 is information which, frankly, in my other hat as a criminal --
9 as a judge in criminal cases, is information that can easily be
10 abused and is sought to be protected to protect individuals
11 from fraud, et cetera. So we have a competing interest.
12 Nobody is debating your primary point which is the integrity of
13 voter rolls is crucial to our system. It's crucial for a
14 variety of reasons, among them that there is not voter fraud.

15 MR. NIXON: Then I would just --

16 THE COURT: More importantly not -- that people not --
17 not more importantly, but as important, that people are not
18 prevented from voting which, frankly, was at least as big a
19 reason for the statute.

20 But the concern that I have from your narrow
21 perspective is that you really know and I know, you and True
22 the Vote does not need birth dates for the millions and
23 millions of people that they are collecting data on in our --
24 in their computers. They don't need it to ascertain voter
25 fraud. They want it for some reason. I don't know what it is,

1 but they don't need it for ascertaining voter fraud.

2 If you really want to ascertain voter fraud in a
3 particular election, which is all the records are good for
4 because we do have a transient society and a year or two later
5 the records are no longer current -- frankly, they're stale.
6 So you have to go get them again.

7 The point is that if you're really looking into voter
8 fraud, you can tell without the birth dates, you can tell from
9 the county and the address -- the name and the address what
10 the -- whether someone is -- things were awry. And then if you
11 have two people with the same name or you have an issue where
12 you need to dig a second level, then I understand the birth
13 dates are critical.

14 But I'm just posing to you that to get the birth dates
15 as a matter of course for everybody in this room, for everybody
16 in town who's a registered voter, for everybody in the state of
17 Mississippi or wherever, that's a lot of information for just
18 Joe Blow to have.

19 Anybody who's rich who wants to go down and get all
20 this information can get it. All they have to do is ask for it
21 under the statute and -- as interpreted by you. And they don't
22 have to really be worried about voter fraud. They just need to
23 go ask for it and they get it.

24 So how do we know as the members of the public that
25 we're not -- that everybody and their mother isn't going to

1 have this data out there to abuse? Okay?

2 MR. NIXON: I am not here to have that or in any way
3 to suggest that there are not curmudgeons in the world who
4 would abuse --

5 THE COURT: Curmudgeons? We're going to call them
6 fraudsters. We going to call them people who want to abuse the
7 system.

8 MR. NIXON: Thief.

9 THE COURT: We going to call them people who want to
10 use it for non -- or inappropriate purposes, to send mailings,
11 to send -- to bother people. You know, I grant you this may be
12 something Congress needs to pick up on; but the reality is
13 today, this statute is just asking for abuse.

14 And maybe Ms. Engelhart (sic) has great integrity.
15 She says she has millions and millions of pieces of
16 information. Sounds like it's the NSA. Okay. Fine. She's
17 paid to have this. She's gotten this information. She wants
18 it. But maybe somebody cracks into her computer.

19 MR. NIXON: That's not a basis to deny a request.

20 THE COURT: Maybe not, but I'm going to just use --
21 since you guys have used this as an opportunity to express
22 policy, I feel like it's important that at least we have the
23 real discussion. I appreciate very much the argument.

24 You know and I know that there's no answer to this
25 question in this statute. But I think it would be of concern

1 that the statute be interpreted as broadly as you all propose
2 when it's coupled with gargantuan requests for information
3 about millions of voters and people. The state of California,
4 she got that information for 30 bucks? Wonder how the
5 California people feel about that?

6 MR. NIXON: And it includes birth dates.

7 THE COURT: Right. I understand.

8 MR. NIXON: Right. The -- the policy issue that you
9 and I are having today is really not determinative of how this
10 court should rule.

11 THE COURT: It may depend on how the statute is
12 interpreted. There are a couple of terms in there that you
13 apparently aren't going to address, but I'm concerned about
14 this. You have talked about the legislative history. I'm not
15 going there about that now. You haven't briefed it, and I
16 don't know what you're referring to specifically.

17 MR. NIXON: It's the *Long* case. The *Long* case refers
18 to it, and I --

19 THE COURT: Well, I've read the *Long* case carefully --
20 actually more than once -- and I'm familiar with what's in
21 there. They refer to it only briefly in passing. There's no
22 detail there, but --

23 MR. NIXON: If a person in Mississippi registered to
24 vote using a federal voter registration application, birth
25 dates are --

1 THE COURT: Yeah, it's in there.

2 MR. NIXON: If a person registers to vote in
3 Mississippi using a Mississippi voter registration application,
4 the application itself is a public record and we get them, the
5 birth date's available, not to be redacted.

6 THE COURT: Is that true or is Mississippi law
7 different?

8 MR. NIXON: No. Secretary of State just said that.
9 She said that today.

10 THE COURT: She did say that? I wasn't sure which
11 record she was referring to.

12 MR. NIXON: So we're really -- this isn't about birth
13 dates. It's about are we going to let somebody investigate our
14 election. That's what this is about. This is -- as my dad
15 said, it's not -- this is not a reason. You're offering me an
16 excuse. This is an excuse.

17 THE COURT: Maybe. Okay.

18 MR. NIXON: It's an excuse. So, Judge, I think I've
19 addressed the reason why we have poll books and the other
20 documents. We have standing. I think we've addressed that.
21 And we've briefed that issue.

22 And it's -- and so just one other thing about why --
23 why who all is here is here. We didn't sue every county in
24 Mississippi, and we didn't sue every election -- county
25 election board in Mississippi because it's -- you know, either

1 somebody would have shot me or maybe you'd have thrown
2 something at me. But the -- but if you listen to them,
3 apparently, I have to sue every county.

4 THE COURT: Well, I overruled those objections.

5 MR. NIXON: Yeah. So -- but my point is, the reason
6 why we didn't sue more people and we limited it was so that we
7 would have a representative example of what needs to be -- we
8 thought that whatever order was entered by this court the other
9 counties would be cognizant of and would follow.

10 THE COURT: I appreciate that. Is there a reason why
11 you didn't introduce any evidence on two thirds of the counties
12 you did sue?

13 MR. NIXON: Yes. When we started today, we thought we
14 had an hour. And we just wanted to do boom, boom, boom, boom,
15 boom --

16 THE COURT: Okay.

17 MR. NIXON: -- and just have very narrow examples.
18 And so rather than -- I mean, we did not anticipate, you know,
19 providing evidence for each county fully to fully develop that
20 county, because I respect the --

21 THE COURT: But you did -- I appreciate that. But you
22 did introduce evidence on counties with people who aren't
23 here -- or counties that you didn't sue. So I assumed that you
24 had some subset of information about these counties.

25 MR. NIXON: It mattered which witness was available.

1 THE COURT: Oh.

2 MR. NIXON: We had some witnesses with doctors'
3 appointments and --

4 THE COURT: Okay.

5 MR. NIXON: -- graduation.

6 THE COURT: Logistics.

7 MR. NIXON: Yes. I mean, you said Thursday the 24th
8 and --

9 THE COURT: Sorry. I just --

10 MR. NIXON: No, no.

11 THE COURT: Life happens.

12 MR. NIXON: We tried to create as good a record for
13 you as we could within a limited amount of time within the
14 parameters that you set for us.

15 THE COURT: Okay. I will allow you to mark for
16 identification the incident reports concerning the counties
17 that are here. And I'll decide after I see them whether I'm
18 going to receive them.

19 MR. NIXON: Okay. Would you like us to do that today
20 or --

21 THE COURT: You can do it this evening and submit them
22 by -- electronically.

23 MR. NIXON: Okay. Judge --

24 THE COURT: I don't want the universe because it's
25 overkill, but I want to know whether you have exam -- since

1 you're trying to use these people as examples, I mean, with due
2 respect -- and this is really with due respect, there was time
3 spent on stuff that, frankly, wasn't part of the case, but I
4 allowed it.

5 So I'm just giving you the opportunity despite that to
6 at least identify the incident reports for the counties that
7 were sued, because if -- I doubt it, but if there is one where
8 you did get the records or you did not make a request, which is
9 part of what I've heard from them, I want to have that
10 identified. Okay?

11 MR. NIXON: Yes.

12 THE COURT: I would appreciate that.

13 MR. NIXON: Yes, your Honor. Judge, do you have any
14 other questions of me?

15 THE COURT: No.

16 MR. NIXON: Okay.

17 THE COURT: Thank you. I don't.

18 MR. NIXON: Judge, it's a very simple, simple choice,
19 simple decision that you have.

20 THE COURT: Okay. Thank you.

21 MR. NIXON: It's very clear. Thank you very much.

22 THE COURT: Thank you. Yes, sir.

23 **ARGUMENT ON BEHALF OF THE SECRETARY OF STATE**

24 MR. PIZZETTA: Your Honor, I appreciate the
25 opportunity to be heard, recognizing we will have additional

1 arguments put in our brief. And if the court would, please do
2 not take the fact that I may not mention an argument right now
3 to be that it won't be raised later on. I'm going to try to
4 spend my time wisely and focus on the arguments that appear to
5 be of most interest to the court.

6 But before I get into the meat of the argument, there
7 is one placeholder I think is important to recognize in terms
8 of preliminary relief. And we will make sure and put this in
9 the brief, and that is that the relief being asked for by
10 plaintiff is, in fact, full and final and irrevocable relief in
11 terms of temporary relief. Right? That if the court issues a
12 preliminary injunction that says turn over these documents, the
13 case is over. And there are important cases, your Honor, from
14 federal courts about not granting full and final relief in
15 preliminary injunction context, but point out another important
16 context too.

17 In FOIA litigation, your Honor, federal Freedom of
18 Information Act cases, there are a number of good cases that
19 say even after a court reaches a final decision on a FOIA Act
20 case, that they often -- the usual course is to stay even the
21 final decision to preserve the right for appeal.

22 And so we want to point that out to the court that
23 truly here in this instance plaintiffs are try to unilaterally
24 deprive us of a full hearing on the merits by getting up front
25 full and final relief. It would also really deny us the

1 practical application of appellate review. That is just a
2 placeholder.

3 But let me get into what I think is a much more
4 interesting argument, your Honor. I'm going to organize it
5 this way. Under the likelihood of success, I'm going to talk
6 about two things most important, that the documents being
7 requested are not NVRA documents and that, two, even if they
8 are NVRA documents, plaintiffs do not get blanket access to all
9 of the birth dates just for saying, *I think I should have it.*

10 The court through the comments you have made already
11 in this case I'm almost sure that you probably already have the
12 case that we're thinking of that is actually the much more
13 on-point case in this matter, your Honor.

14 Your Honor, this case particularly addresses the
15 questions of even if it is an NVRA document, do you get full
16 access to birth dates and everything else? It is a fascinating
17 case, your Honor. Very recent. In this case plaintiff
18 Democratic Party was suing a defendant who, if I'm remembering
19 this correctly, was the county registrar. And the Texas
20 Democratic Party accused the county registrar of violating the
21 NVRA and violating the Equal Protection Act.

22 And in the context of that litigation, in a discovery
23 request, in a discovery request, plaintiff said, *We want all of*
24 *your NVRA information. We want voting records. We want*
25 *everything, birth date,* under the guise of protected discovery.

1 And when the court bristled at that, they said, *Well, not only*
2 *are we entitled to it under discovery, we are entitled to it*
3 *under the NVRA.* And this terrific Southern District of Texas
4 case said, *No. You're not entitled to every bit of birth dates*
5 *and Social Security information.*

6 And the reasoning is compelling, and it is the
7 reasoning that this court has already picked up on. It talked
8 about the history of the NVRA being one to promote voter
9 registration and it is limited to voter registration. And it
10 said it is reasonable interpretation that Congress admitted
11 exclusion for this more personal general information because
12 there was already federal legislation out there like FOIA and
13 other federal legislation that protected things like birth
14 dates.

15 So they said while you don't find it explicitly in the
16 statute, it can't be that Congress would say on one hand, for
17 FOIA requests, if you come to the federal government and ask
18 for a FOIA request for everybody at the Department of
19 Education, for their birth dates, FOIA well-established law
20 says you don't get that.

21 THE COURT: The problem with that is that FOIA has a
22 bunch of exceptions in it or exemptions, and this statute
23 doesn't.

24 MR. PIZZETTA: That is correct, your Honor. And
25 that's where both this decision and one of the *Long* decisions

1 I'll talk about in a moment explicitly addressed. And in this
2 decision the court said it's not explicitly in there, but
3 Congress wasn't legislating in a vacuum. They knew that there
4 were other protections that were out there.

5 And they mention concerns about -- they contrasted --
6 there are other statutes out there that they mentioned. As a
7 matter of fact, I think it's section -- it's 1974b. It's a
8 good discussion in the case where they talk about that
9 authorized the Attorney General of the United States to get
10 certain documents under certain limited conditions and with
11 certain protections. And they said, well, it can't be that
12 Congress in 1974b gave these restrictions as to what the United
13 States Attorney General can ask for, but under 1973gg allows
14 anyone off the street to ask for any document with no
15 protection. It can't be the case that Congress meant that to
16 happen.

17 They noted that disclosing this personal information
18 could deter people from registering to vote. And there's a
19 terrific quote that says, "Federal voting legislation does not
20 preempt common sense, and disclosure of information explicitly
21 protected by the Texas Election Code is simply irresponsible."
22 And there, as in here, there is a state statute that says you
23 don't turn over this type of information.

24 And there's another great point about this case, your
25 Honor. At the end, the court sort of set up this interesting

1 paradigm where it appears the court was begging plaintiffs here
2 to say, *Ask for a smaller subset. Ask for what you need.* And
3 they get to the end of the case where he -- where the court
4 denies the motion to compel after citing NVRA and says,
5 plaintiffs have failed -- have offered no compromise position
6 to their request on limited access to the database, and the
7 court is unable to accept plaintiffs' argument that these very
8 schemes protecting personal information are preempted by both
9 the Voting Rights Act and the NVRA. So they said you don't
10 just get to walk in and take it all.

11 This decision is good, but it really ties into, your
12 Honor, the *Long* decision. Here's important ways to look at
13 *Long*. There are three decisions in *Long*. The first one to us
14 is the most important one, in 2010. We'll call it *Long 1*.
15 That's the decision by the lower court, the first one.

16 And that's the decision where the court looks at the
17 request and says, *All right. We're going to redact Social*
18 *Security numbers. Not going to allow those to be provided.*
19 What struck me with that case was -- every time I read it, I
20 thought, *Now, wait a minute. If everybody's right, there are*
21 *no exemptions. There's nothing in the NVRA that says you*
22 *redact Social Security numbers. How is it that the court, this*
23 *same court, all of sudden says redact Social Security numbers?*

24 And they say it for three reasons, your Honor. But
25 when you listen to all three of these reasons, you say -- you

1 could -- you could exchange the word "Social Security" for
2 birth date. The first reason they said, *We're going to say*
3 *Social Security numbers are exempt*, is because they're
4 sensitive and vulnerable to abuse. That's the same thing for a
5 birth date.

6 The second thing they said was, *Well, Congress has*
7 *already said you can't get Social Security numbers through*
8 *FOIA. So why would we let you get them through the NVRA?*

9 The third thing they say -- actually, it maybe four in
10 my count. The third thing was, they said, *You know, we've got*
11 *regulations even in federal court. We don't allow you to post*
12 *somebody's Social Security number in a new file.*

13 And the fourth thing, they dropped a footnote, and
14 they said, *And Virginia has this really great state statute*
15 *that says, Don't produce Social Security numbers for this kind*
16 *of information.*

17 So when *Long 1* looks at those four factors, exactly
18 the same four factors here, then the court says, *All right,*
19 *Mr. Pizzetta, that's great, but in Long 3 --* I guess if you say
20 it goes up to *Long 2*, comes back down -- *Long 3, the court*
21 *didn't allow them to redact birth dates. You're right.*

22 Here's the difference between *Long 3* and what we have
23 today. In *Long 3*, the dispute was very specific. Plaintiffs
24 had made credible allegation that a certain subset, a limited
25 defined subset -- and by memory, your Honor, I think it was

1 college students or college-age students -- were not being
2 allowed to register. Right. And they made credible
3 allegations about that.

4 And the court said, *Okay. I'll let you see those*
5 *voter applications. Those are the ones you're asking for that*
6 *are at issue in this case. Long 3* did not say you can just
7 come in and ask for every date of birth for every registered
8 voter in the state and then let you decide on the back end
9 which ones may be relevant. So I think when you take *Long 3*
10 and you take the decision -- the Texas Democratic Party
11 decision, you get to exactly where this court is heading and
12 that is --

13 THE COURT: I'm not sure where I'm headed. No.
14 Seriously, I have serious concerns. And I do believe, I really
15 do believe, that True the Vote could get what it needed to
16 challenge any election it wanted without birth dates. It has
17 elected not to do that. It has the right it believes under the
18 statute. The statute is written broadly. And so we're here to
19 figure out what the statute's language actually means. But I
20 don't know where I am yet.

21 MR. PIZZETTA: Your Honor, I appreciate that. Maybe I
22 should say where I hope this court is headed. But that -- this
23 generalized request just doesn't fit within the concept of the
24 NVRA. And maybe the other way to look at it, because in all of
25 these cases, even when they're talking about the NVRA, they

1 always cite Freedom of Information Act cases. And that I think
2 is the appropriate balancing test. And that's really what --
3 the difference between *Long 1* and *Long 3* is sort of, *Do you*
4 *need the information?*

5 And FOIA says the same thing. While you may not be
6 able to get the birth date of every person who works at the
7 Department of Education, if you can go to a court and make a
8 specific showing that you need the birth date of X person or Y
9 person for some legitimate reason, then those FOIA courts say,
10 *All right. We balance the privacy with the intent of the*
11 *statute.* And in some instances you could get that information.
12 But what you don't do, you don't get, is a data dump.

13 And there's wonderful FOIA cases too, your Honor, that
14 distinguish this kind of electronic-format kind of distribution
15 where it's just ripe to be posted on the Internet or mined for
16 other data or cross-referenced or sent out to other people that
17 do mailings, that those kinds of bulk disclosures raise higher
18 concerns about privacy than just going and saying, *I have a*
19 *concern about* -- for instance, if they find two voters in
20 Covington County and they say, *I think this voter is actually*
21 *not 18. I want to see his birth date,* if they've got some
22 credible reason for that one voter, that's different than
23 asking for what would be about 1.8 million active voters on
24 poll books across the state of Mississippi. So to us that
25 is -- even if they are NVRA documents, there are exceptionally

1 strong arguments and policy reasons.

2 And the last part of that argument, your Honor, that
3 you'll see in the brief are some terrific decisions in the
4 public records context from the Texas Supreme Court and the
5 Arizona Supreme Court. But I raise it for this. When I read
6 the Texas Supreme Court decision where it -- from memory, I
7 think they wanted the address of all the bar app- -- bar
8 members, date of birth of bar members.

9 And the Texas Supreme Court said -- you know, talking
10 about there's little question that this information is
11 sensitive -- and I'm sorry. That's in the Arizona Supreme
12 Court. They said with both a name and a date of birth, one can
13 obtain information about an individual's criminal record,
14 arrest record, driving record, state of origin, political party
15 affiliation, Social Security number -- because there's a way to
16 reverse engineer it -- current and last address, civil
17 litigation records, liens, property owned, criminal -- credit
18 history, financial accounts, and possible other information. I
19 had no idea until I read that opinion how date of birth, much
20 like Social Security, and everyone recognizes now, is the entry
21 to this information.

22 So the two sub-arguments there before I move back to
23 NVRA is proper is that the disclosure of this information both
24 raises privacy concerns and -- very legitimate privacy concerns
25 and identity theft questions. And you'll see when we brief

1 this, your Honor, that using date of birth is a serious issue,
2 it is a serious concern, and it's the basis of these decisions.

3 THE COURT: How do you reconcile the point made by
4 Mr. Nixon that the name, address and date of birth are
5 available upon a slightly different request?

6 MR. PIZZETTA: Not -- if what Mr. Nixon was talking
7 about was testimony from Mr. -- Ms. Turner, I think what
8 Ms. Turner was explaining that is, yes, if you came and asked
9 for an individual NVRA application, that may be a closer
10 question about do you get that date of birth. I'm not sure
11 that that's a settled point of law even after *Long*.

12 But that -- if that's -- you're concerned about could
13 you find out individual birth dates, I'm not sure you can, as
14 you say, blanket manner coming in under NVRA and say, *I want to*
15 *know Harold Pizzetta's birthday*. I have no reason to think
16 otherwise than I would like to know it so that I can go to CVS,
17 a drug store here. And when say, you know, *I'm here to pick up*
18 *my prescription*. They don't ask me a Social Security number.
19 They ask date of birth. So they go pick up my prescription. I
20 don't think you can necessarily get it just on a whim.

21 And there's another line of cases that -- I'm not sure
22 it's exactly what you're asking, but there were a very
23 interesting line of cases where people said, *But, look, I can*
24 *find somebody's date of birth out probably if I looked hard*
25 *enough in some other record*. And the court said, again, *That's*

1 *the difference between your individual work to find a date of*
2 *birth somewhere and you being able to go to the State of*
3 *Mississippi and say, 'Give me 1.8 million listed alphabetized*
4 *by name and address.'* Much bigger privacy concerns.

5 But then to back up -- but that's my favorite part of
6 the argument, your Honor. But to back up to what the question
7 to begin with is, are they even NVRA documents?

8 THE COURT: Are they what?

9 MR. PIZZETTA: NVRA documents. And, your Honor,
10 they're not NVRA documents.

11 Let me start with saying the first thing that opposite
12 counsel has been very gracious to us in our short time we've
13 met each other was -- the first thing he said is, *I want* -- he
14 wants voter rolls. I'm not sure -- I could be mistaken -- that
15 I've seen anywhere that any of the plaintiffs have actually
16 asked for a voter roll. But if they want a voter roll, there
17 is a way to get it. It doesn't have date of birth on it. But
18 there is a document that is available that's -- that -- voter
19 roll, doesn't have date of birth. I believe it is available
20 electronically. It's easy to deal with.

21 The second document we talk about is poll books.
22 Obviously, that's the focus here. Right? And I think the
23 reason why we know poll books are not NVRA documents -- and I
24 can say from our search -- I can tell you that I think there's
25 a case out there that explains this one way or another -- sort

1 of defines outer context -- we just haven't been able to find
2 it yet. So I think we have to reason by analogy and say, *Is*
3 *the poll book the same thing as the voter roll?* Everybody
4 agrees it's not. Right? Because it's only a subset of voters.
5 It's not all registered voters. It's only a subset that
6 happened to be labeled as active.

7 THE COURT: Happened to be labeled?

8 MR. PIZZETTA: Active. So an example I think of is if
9 I go to -- come to vote and I'm not listed on the poll book, I
10 still get to vote. I cast an absentee ballot; and before they
11 count it, they go back to the voter roll to see if I'm on it.
12 So it's a subset of voters.

13 THE COURT: Do voter rolls have your address or
14 county?

15 MR. PIZZETTA: Yes, ma'am, I believe that's correct.

16 THE COURT: The real relevance about whether your vote
17 is going to get counted is that you're still voting in the same
18 county even if you're at a different address, apparently. I
19 think the testimony is that if you're in the same county, the
20 presumption is they're going to count the vote, the affidavit
21 vote; but if you're in a different county, it's not likely to
22 get counted because you didn't register and change your
23 address.

24 Do the voter rolls have county on them? I'm only
25 asking that because of the way you're arguing.

1 MR. PIZZETTA: Do they have counties? Do we know,
2 Kim?

3 MS. TURNER: I'm sorry?

4 MR. PIZZETTA: Voter roll have county on it?

5 MS. TURNER: Yes.

6 MR. PIZZETTA: Your Honor, they do have the counties
7 listed on them. They don't have date of birth, though. We
8 don't provide date of birth with them.

9 So the other aspect about the poll book, though, and
10 then you'd say is it any part of the poll book that is used as
11 part of voter roll maintenance? No. It's never reverse
12 engineered, if you would, to put information back into the
13 voter roll. All right. So if you think of the conceptual
14 document you may ask for under NVRA, voter roll or your
15 policies relating to how you maintain that voter roll, that's
16 fine; but poll book never inputs data to the voter roll. So
17 it's not --

18 THE COURT: Well, the -- I think the argument would be
19 that the poll book is used on voting day, which I was trying to
20 ask this question earlier. I got nowhere because I couldn't
21 frame it correctly. But the point is voting day, the word
22 "vote" or "voted" is added to the poll book, polling book. And
23 so after the fact that might have legal implication for whether
24 you -- well, might have some -- I don't know. It might have
25 some legal implication.

1 MR. PIZZETTA: Yeah. I think -- I think there was a
2 question where plaintiffs were trying to link that back into
3 somehow you might get kicked off the voter roll. And I believe
4 the answer was, no, your voting history alone never kicks you
5 off.

6 THE COURT: Right. So the way it would have impacted
7 is if you're in the inactive status and you fail to vote over I
8 think a period of two years or something.

9 MR. PIZZETTA: I sort of think of a poll book as a
10 list of who voted.

11 THE COURT: Right.

12 MR. PIZZETTA: But it's not a list of who was eligible
13 to vote. And it's not a proxy for the voter roll. It's a
14 different list. It serves a different function. In effect,
15 your Honor, it sort of says which type of ballot you can cast.
16 Do you get to walk right back and do one of the electronic
17 ones, or do we get an affidavit from you because we haven't
18 seen you in a while? But in no way does it stand as the proxy
19 for the voter roll.

20 So maybe you look at it this way. If you said,
21 *Plaintiffs, if you really want to know whether Mississippi's*
22 *voter roll is accurate, whether we've listed people on there*
23 *who are 16 or whether we have people from foreign countries or*
24 *whatever it is, then the document you would ask for is the*
25 *voter roll. You don't ask for the poll book.*

1 But the real issue is they don't want to know. They
2 don't want to know who's registered to vote. The complaint and
3 the TRO go on and on about crossover voting. That's what they
4 want. And I appreciate that. That's an interesting and a
5 controversial issue at this point in time. So I understand why
6 they want the voter roll.

7 But what they're attempting to do is to pound a round
8 peg into a square hole, because the voter roll doesn't get --
9 come to them under NVRA. But they can get it under Public
10 Record. But you're right, they don't -- they probably don't
11 want to spend the expense of paying per page, and there was
12 some confusion about whether they're paying for redaction.

13 Your Honor, I think all that gets easily worked out in
14 the wash. Most of these counties, as I understand it, weren't
15 even charging them for any extra time for redaction. It was
16 all just 25-cent per page or \$1 per page, whatever that is,
17 which sounded like a lot of money to a True the Vote volunteer
18 who comes out from California and says, *Well, what do you mean*
19 *it's \$1,400?* That's --

20 THE COURT: He said 14,000. I wondered if he was off
21 by a digit, but many of them -- even 1400 would be a lot of
22 money.

23 MR. PIZZETTA: And he -- if there --

24 THE COURT: In 80-some counties or whatever you've
25 got.

1 MR. PIZZETTA: That's right. That's right. But even
2 the NVRA says you can charge a reasonable amount. Right? And
3 I -- if I remember, the explanation was at like 25 cents a
4 page, that's only like 8,000 pages of poll book. And we saw
5 from the example the poll books only have maybe 10 or 12 folks
6 listed on them. So you're right. A big county has a big book.

7 And so your question is: Does the state or does the
8 county absorb the cost of making all these copies of an
9 8,000-page book, or does the NVRA say, *Yeah. That's right.*
10 *You can charge a reasonable cost?* And it is a lot of money. I
11 understand that. But it's a lot of money that somebody's got
12 to pay, and the statute clearly says the requester does. But
13 that's why the poll book issue is not about birth dates. It
14 was just about getting it at the time.

15 The last couple of documents, your Honor, or at least
16 more interesting, but very small issues, absentee ballot
17 applications and those kind of things.

18 THE COURT: Just one second. There's some issue about
19 5:30.

20 (OFF-RECORD DISCUSSION)

21 DEPUTY MARSHAL: At 5:30 all the doors lock in this
22 building. So at 5:30 if you want to leave, you can. You can
23 be escorted down to the second floor now, but after 5:30 you
24 will not be able to get back in.

25 THE COURT: Okay. So anyone that wants to see the

1 rest of this, has to stay. Anyone who chooses to leave, may
2 leave. No hard feelings. I understand completely. But you
3 cannot come back. Okay. Thank you very much. That does
4 clarify.

5 MR. PIZZETTA: Your Honor, is it bad to say I would
6 really like to leave by 5:30?

7 THE COURT: I know the feeling.

8 MR. PIZZETTA: But, your Honor, without disclosing the
9 year of my birth, today of all days happens to be --

10 THE COURT: Your birthday?

11 MR. PIZZETTA: -- my birthday.

12 THE COURT: Is it a big birthday?

13 MR. PIZZETTA: It's not. It is because I'm still
14 here, but it's not a big one.

15 THE COURT: I had a very big birthday not long ago,
16 like a really big one, a really depressing one, which is one of
17 the reasons I think I'm here and I'm not still sitting in
18 Houston. But the point is it beats the alternative.

19 MR. PIZZETTA: Yes, ma'am.

20 THE COURT: We have to keep that in mind.

21 MR. PIZZETTA: Thank you.

22 THE COURT: Go ahead. Happy birthday.

23 MR. PIZZETTA: Thank you very much. I'll put this
24 together and finish my points. The absentee ballots and
25 absentee envelopes, those issues I think are imminently

1 workoutable. Those -- the main issue as I understand it from
2 the counties are when folks come on -- and the court sort of
3 already identified it. When you come in on the 7th and 8th,
4 give a list of 15 different documents, or let's just say
5 anytime within the two to three weeks after the election, these
6 ballots are protected. They are sealed.

7 Knowing election disputes, one of the big things they
8 have about election disputes is what was the chain of custody,
9 did somebody stuff a ballot in there, did somebody take ballots
10 out? And so clerk -- our county clerks are necessarily
11 exceptionally protective. And in this case rightfully so.
12 Right? I mean, the attention that this has gotten. So when
13 people come in and ask for it, it's just not available at that
14 time.

15 THE COURT: Right. Okay. I got the sense from the
16 papers and argument that -- and evidence, frankly, that there
17 is -- there are time frames. And I could use a summary -- if
18 it's a matter of state law or the record or whatever, I could
19 use a summary if you have a quick and dirty one here about the
20 time frames, because on the phone you mentioned something about
21 certification and we knew that had just happened, and then
22 there's something about seeing the ballot boxes after the
23 certification but before some other time. Help me out with the
24 overview, please.

25 MR. PIZZETTA: Your Honor --

1 THE COURT: And, again, if somebody disagrees, chime
2 in.

3 MR. PIZZETTA: Thank you, your Honor. I will try to
4 stay sufficiently 10,000 foot so I won't mess up a detail. But
5 time frame, we just passed the moment where the ballot box
6 examinations by the candidates could happen. There was a
7 12-day window. Let me say there's discussion about whether it
8 started on one day versus the next day, but there's a 12-day
9 period, and that has basically ended.

10 We are now in that posture where as we understand it
11 the McDaniel campaign is going to file a challenge imminently.
12 State law is not exactly clear, I will say, knowing that people
13 are listening to me for clues as to when it has to be filed.
14 But every day that goes by is a danger it is out of time. So I
15 think we're looking at a challenge being filed within the next
16 seven to ten days.

17 THE COURT: Okay. But what happens before that 12-day
18 period?

19 MR. PIZZETTA: Before that 12-day period, there's
20 still the process of finalizing the tab -- well, we've got
21 basically about a 14-day period before they were sued -- let me
22 say it this way, your Honor. The night of the election we know
23 there's lots of counting. The next day, there's more counting.
24 They have folks that night to begin to certify the vote. So
25 there's five days for absentee -- for affidavit ballots to be

1 resolved, if you voted with -- if you had an ID issue. So five
2 days you're still open to bring back in to validate your vote.

3 Then the committees counted that and certified it to
4 the Republican Party. As soon as they finished with their
5 vote -- their counting of it, they've got their ballot boxes,
6 they reseal them. They're sitting there in the counties. They
7 certify to the Republican Party. The Republican Party
8 passes -- the Republican Party does the certification. They
9 pass that to the Secretary of State, and he just holds it.

10 It's like the Democratic -- it's like the Democratic
11 committee. We don't go count the votes from, you know, the
12 nomination of Obama. We're just are told who to put on the
13 ballot. Right? So we just said, *Okay. You told us who it is.*

14 Once it gets to the Republicans, that's generally
15 where the 12-day period for a candidate now gets to say, *Okay.*
16 *The results are certified. Now as a candidate, I can go look*
17 *at those ballots and see if I want to challenge.*

18 THE COURT: And that's the 12-day period.

19 MR. PIZZETTA: That's the 12-day period. This is --
20 that started, I think, the 7th, more or less, with some
21 disagreement for 12 days beyond the 7th. So the 19th. Now
22 we're in that very small window where if a candidate is going
23 to challenge, it's now or never.

24 And if they do -- you can imagine if they say, *I think*
25 *there's massive voter fraud in Rankin County,* it could be that

1 whatever judge hears it, the next thing they do is order all of
2 those ballots to be brought to Rankin County, you know, under
3 lock and key to be kept up there for safety while they go
4 through it.

5 So how this meshes -- this is a great -- this is a
6 very important point about how the NVRA is not a statute for
7 election contests. It's -- because federal courts don't get
8 involved in election contests. Right? And so the NVRA is not
9 some sort of quick discovery tool.

10 And here's the example. Leaving aside the lack of
11 proper notice in this case, we all recognize that before you
12 can bring a private right of action under NVRA, there's these
13 really big notice provisions. The clearest example, assume for
14 a second this is the general election. And the day after the
15 general election the losing candidate says, *I was robbed and I*
16 *want all -- to look at all this.* And they go the day after the
17 election and they say, *Give me all your NVRA documents,* and the
18 county says, *No.* Under the statute you have to wait -- you
19 have to give notice and wait 90 days before you can bring suit
20 under that example. And so we know before you can bring suit,
21 90 days. You can't rush the court. 90 days. And that's the
22 opportunity for the State to investigate and to cure for the
23 counties. And so we know it is not a postelection discovery
24 for candidates.

25 Now, your Honor, I would use that as an example, and

1 my very good counsel is going to say, *Mr. Pizzetta, you're*
2 *forgetting. It's a shorter time frame under these kind of*
3 *examples. It's important not to be crossed on that. It has to*
4 *do with when the violation occurs. If a violation occurs*
5 *within 30 days from an election, you don't have to give notice.*
6 *Right? So if you're asking on the front end for voter poll*
7 *stuff and they don't give -- or voter registration stuff and*
8 *they don't give it to you, you might be able to sue.*

9 But when the violation -- when you go after the
10 election and ask for the poll book, which is necessarily after
11 the election because it's not marked until then, generally,
12 there's a 90-day trigger. So, in other words, Congress doesn't
13 want this to be the way you go in and bust down the doors of
14 the clerk's office while the poor clerks are trying to do
15 everything else they do and keep the candidates happy and say,
16 *Give me this document and give it now.*

17 And I wish I could remember the county like -- I think
18 it was Leake County. They have a circuit clerk, and I think
19 it's a part-time assistant, and that's it. And circuit
20 clerks -- your Honor, you probably don't know this. Circuit
21 clerks in Mississippi do the grand jury issues, all the grand
22 jury questions. They do all the filing. They do all the
23 marriage licenses. They're busy folks to begin with. They are
24 super busy during this time.

25 So that's NVRA -- this is -- that's why you have such

1 a hard time figuring out how to put NVRA on top of state
2 procedures that must be done in the 12 days. They don't match
3 because they were never intended to match.

4 And it reminds me of my favorite quote about election
5 law from the Fifth Circuit, the *Noble v. White* decision in
6 1993. The Fifth Circuit said, "If there are areas where angels
7 fear to tread, surely there are places the sight of which make
8 federal judges tremble. Federal judges are wise to hesitate
9 before entering the judicial thicket of state election law; we
10 will chop trees if absolutely necessary, but ever mindful of
11 our commitment to comity." Very true here, your Honor.

12 This is -- this -- and when you come up and you look
13 at that third part of the claim and it's, you know, asking you
14 to resolve parts of whether this election is good or bad, I
15 think we know where we go.

16 With that, your Honor, I will quickly mention there
17 are other arguments we have, your Honor, about the timing
18 issue. We've got a very important argument that we will make
19 to you in the brief about the Secretary of State not being the
20 right party. And just as an example, when True the Vote sued
21 over the Allen West election in Florida in just 2013, they
22 wanted documents from the county; the county wouldn't give
23 them. They sued the county.

24 When the county filed a motion to dismiss arguing that
25 *You failed to join the proper party, the Secretary of State,*

1 True the Vote argued, *No, no, no. We don't sue the Secretary*
2 *of State when it's a question of a county not giving us*
3 *documents.* So we will be developing that argument I think more
4 for you. And I didn't want -- I know I've got a client who
5 would be very upset if I didn't make that argument.

6 THE COURT: Okay. That's fine. But the point is,
7 really, it depends on the -- to some extent anyway, on the
8 individual state statutes, I would think.

9 On the NVRA, if the Secretary of State has been
10 certified as that statewide official, that has some importance
11 to me. I'm not making a ruling here. I'm just saying that
12 would indicate some involvement. Whether it's enough to be the
13 named defendant, I don't know. But the other thing that -- so
14 I respect that you're making this argument, but I'm not sure.
15 With regard to the West challenge, was that under the NVRA or
16 was that just an election challenge?

17 MR. PIZZETTA: Your Honor, I believe that was an NVRA
18 lawsuit. I will --

19 THE COURT: Okay.

20 MR. PIZZETTA: I will be -- I will stand corrected if
21 it wasn't, but my memory was it was NVRA.

22 THE COURT: Okay.

23 MR. PIZZETTA: And we will bring that to the court's
24 attention in the brief. And, your Honor, it's a good point.
25 You're right. The Secretary of State has a role under NVRA.

1 And I think if the Secretary of State was being sued because
2 the Statewide Election Management System wasn't operating
3 right, that there are duties he has with regard to this
4 statewide system, I think that would be a much closer argument
5 about whether he was the proper party. But when you really
6 look to something that he doesn't have control over like
7 documents, I think it leans to that other side. But it is
8 certainly an argument that we will need to flesh out.

9 THE COURT: What happens to the documents after
10 they're certified and the period for challenge is over? Do the
11 counties maintain those ballot boxes, et cetera?

12 MR. PIZZETTA: Yes, ma'am. The actual -- like the
13 original -- the poll books themselves, they stay with the
14 counties and the ballots stay with the counties.

15 THE COURT: Okay.

16 MR. PIZZETTA: There's some elements of the
17 information that might be uploaded onto SEMS.

18 THE COURT: Right. That part I got. The messy part
19 here is that the county clerks -- circuit clerks seem to have
20 taken their direction on responding, to the extent they
21 responded to the request, they took their direction -- or at
22 least that's how it's been characterized. They perceived they
23 were taking direction from the state Attorney General -- or I'm
24 sorry -- Secretary of State.

25 MR. PIZZETTA: That is true. There is no question

1 that some circuit clerks will call and they will ask the
2 Secretary of State, *What do you think?* They'll call the
3 Attorney General's Office, *What do you think?* They'll call
4 other circuit clerks. A number of them don't.

5 And I think the testimony today was a good number of
6 counties just gave them what they asked for. So you can't take
7 from that that the Secretary of State has some authority to
8 direct them one other way.

9 I like the way the Secretary explained it to me. He
10 said, *Harold, there are 82 circuit clerks, and they will come*
11 *up with 83 different ways to do it, and there's nothing I can*
12 *do about it. We do our best to try to assist.* So -- by no
13 means am I saying, you know, that plaintiffs are off base and
14 this is shock to us, and we've never -- you know, this is --
15 we're not Republican Party in this respect. I mean, we at
16 least -- I understood what these guys were talking about when
17 they gave us the notice. So -- but it's not nearly that clear.

18 THE COURT: Okay.

19 MR. PIZZETTA: The last part, your Honor -- and I just
20 want to make sure in case we're considering in terms of a
21 preliminary injunction -- is this irreparable harm question.
22 And the brief aspect on that is, first of all, there's actually
23 irreparable harm to the State if you grant the preliminary
24 injunction.

25 The best case on that is the 2003 decision from the

1 Fifth Circuit in the *Planned Parenthood* case, a Texas case,
2 where it went up on a preliminary injunction, and they said --
3 the Fifth Circuit said that a state necessarily suffers the
4 irreparable injury of denying the public the interest in its
5 enforcement of its laws when the federal court issues an
6 injunction prohibiting it from being enforced.

7 And so as plaintiffs have set it up here today,
8 there's conflict between Mississippi law that says you don't
9 produce date of birth with NVRA. But the court when it decides
10 this matter and if it says, *State law, you're trumped*, I mean,
11 that is -- for purposes of -- it's an irreparable injury in the
12 context of preliminary injunction.

13 And I should say, you Honor, I was told that, by the
14 way, the Mississippi Supreme Court denied this afternoon the
15 petition for rehearing. So it is now settled that the State of
16 Mississippi State Law protects the date of birth on poll books.

17 There's no irreparable injury to plaintiffs to decide
18 this on the front end. The things they mentioned in their TRO
19 brief, they said first without immediate access to this
20 information, an unlawful election may be certified.

21 THE COURT REPORTER: Whoa.

22 MR. PIZZETTA: I am so sorry. There is no irreparable
23 harm to the plaintiffs. The first argument was if they don't
24 get the documents immediately, there's the danger the election
25 will be certified and it will be less than forthright, or some

1 argument like that.

2 As the Republicans have pointed, it has been
3 certified. It was actually certified before they filed their
4 TRO. So that has gone.

5 The second thing they say is, *Well, if we don't get*
6 *the documents now, someone may not file a challenge.* But, your
7 Honor, they filed a challenge. That's what Count 3 is. They
8 filed a challenge that says the vote is diluted. So not having
9 the documents didn't stop them from filing a challenge. And if
10 they need quick access to the documents in order to really
11 pursue their vote dilution claim, they should be asking for
12 expedited discovery under a protective order, because I'd
13 imagine this court would say, *Even if I give you the documents*
14 *in discovery, there's going to be tight controls and you are*
15 *not going to let these date of births out.*

16 The second thing is the candidate is likely to
17 challenge. The real issue is the harm to plaintiffs -- they
18 just don't want to say it, and I understand why -- is they want
19 to participate in the public debate, and I don't fault them for
20 it. But there's plenty of good case law that says wanting to
21 participate in a public debate is not irreparable injury. And
22 they come in the context of FOIA cases where someone says, *I*
23 *have to get this information* -- as a matter of fact, I think it
24 was an NSA type of case. *You've got to give me this so I can*
25 *go public,* and the federal courts have said a movant's general

1 interest in being able to engage in an ongoing public debate
2 using information that it has requested under federal law is
3 not sufficient to establish irreparable harm will occur unless
4 the movant has access.

5 The final aspect, your Honor, is the public policy.
6 An injunction would not serve public policy and if for no other
7 reason than the public policy of this state and of many states
8 is that this information is protected. So if you grant an
9 injunction and you release that information and it turns out
10 when the case goes to the merit it goes the other way, there's
11 no way to resolve it or to reverse it.

12 And that is a good decision for the D.C. district
13 court, 2007, *Judicial Watch*, that talks about that as to
14 although -- it says, "Although the court may not ultimately
15 decide that the protections do not apply, to grant the motion
16 for preliminary injunction at this early date threatens to
17 trample those statutory privacy protections before a decision
18 on the applicability of those protections are fully litigated."
19 So would it be against public interest to just release all of
20 this public information.

21 Your Honor, thank you very much for --

22 THE COURT: Thank you. Thank you very much.

23 **ARGUMENT ON BEHALF OF THE REPUBLICAN PARTY**

24 MR. WALLACE: Mike Wallace for the Republican Party.

25 I had not intended to speak until the day you get to Count 3 on

1 vote dilution, if we are still in the case. The evidence
2 undisputedly shows that the Republican Party does not possess
3 and has never possessed any of the documents that plaintiffs
4 say they want. But I was concerned to hear your discussion
5 with Mr. Nixon in which you seem to agree that Mississippi law
6 on the right to participate in the Republican runoff may be
7 relevant in some way to your determination under federal law.

8 THE COURT: The argument is that even if poll books
9 are not relevant or not within the NVRA generally, that in a
10 runoff the existence of the notations of who voted in the
11 primary -- immediate preceding primary may dictate the
12 eligibility for where you can vote in the runoff.

13 MR. WALLACE: I understand --

14 THE COURT: It's a very narrow principle, and it could
15 be avoided by the unofficial voter form arguably.

16 MR. WALLACE: I understand the argument about why it's
17 relevant. What I want you to know, since it is our primary, is
18 the status of Mississippi law on who is entitled to vote in a
19 Republican runoff.

20 THE COURT: Okay.

21 MR. WALLACE: There is no statute that says that an
22 individual who votes in the first Democratic primary is
23 ineligible to vote in the Republican runoff. No statute says
24 that. There is no decision of any court that says a person who
25 votes in the Democratic first primary is ineligible to vote in

1 the Republican runoff.

2 There is a Fifth Circuit decision called *Mississippi*
3 *Democratic Party v. Barbour* where the Fifth Circuit
4 specifically noted that the Democratic party had not done what
5 they needed to do to even attempt to restrict eligibility to
6 vote in their primaries. And I'm here to tell you that the
7 Mississippi Republican Party has never attempted to exclude
8 anybody from any primary.

9 The reason that Ms. Turner told you that they tell the
10 poll workers to look at those forms to see who voted in the
11 original primary is that there is an Attorney General's opinion
12 that dates back to 1978, which you have not seen and they may
13 put it in their brief, which says that if you vote in one
14 party's first primary, you cannot vote in the runoff.

15 And it's absolutely intelligent for the Secretary of
16 State to rely on that -- on that opinion because we have a very
17 good statute that says public employees have a good faith
18 defense when they rely on Attorney General opinions. And it is
19 entirely reasonable that every one of these circuit clerks
20 listens to the Secretary of State when the Secretary of State
21 tells them what the law is, because the Secretary of State is
22 relying on Attorney General opinions.

23 But if your Honor decides that it is important for you
24 to know in interpreting federal law what the law is on who may
25 vote in a Republican runoff, I am here to tell you that you

1 will be first judge ever to venture into the forest of that
2 Mr. Pizzetta just warned you about. There is no law. The law
3 on which their Count 3 is premised does not exist.

4 Now, the other reason I'm here is to introduce my
5 colleague from Wise Carter, Russ Nobile. Before he came home a
6 couple of years ago, he worked in the Voting Rights Section at
7 the Justice Department. He was on their task force on the
8 National Voter Registration Act. He is experienced in knowing
9 what the Justice Department thinks is covered by 8(i) and why
10 it's covered by 8(i). And he may just want to stand up and
11 tell you if he agrees with everything Mr. Pizzetta has already
12 said, but that's why I asked --

13 THE COURT: Or what Mr. Nixon said.

14 MR. NIXON: Maybe so. But that's why I asked him to
15 come up from Gulfport today, even though the Republican Party
16 doesn't have any of that stuff. Thank you, your Honor.

17 THE COURT: Yeah, you may proceed.

18 **CONTINUING ARGUMENT ON BEHALF OF THE REPUBLICAN PARTY**

19 THE COURT: With that kind of buildup, I don't feel I
20 can stop you.

21 MR. NOBILE: Russ Nobile from Wise Carter on behalf of
22 the Mississippi Republican Party. It's nice to have an
23 opportunity to finally prove some semblance of worth to the
24 firm. So I appreciate Mike for that. At the risk of
25 getting -- being pedantic, I just want to actually talk about

1 the text of the statute.

2 THE COURT: I would like that.

3 MR. NOBILE: 8(i), section 8, as we formerly called it
4 in a previous life. But Section 8(i), as the court has
5 suggested, has fairly clear, fairly unambiguous qualifications
6 to the type of data that is covered. It is the type of data
7 related to records concerning implementation of programs and
8 activities for the purpose of ensuring accuracy and currency of
9 the official list.

10 Now, that is not the same thing as the voter
11 registration applicants. With all due deference to the Fourth
12 Circuit -- and I completely agree with everything that the
13 State has said today -- I do not agree -- you know, my reading
14 of the statute and my experience with the statute is that voter
15 registration applications, federal, state, electronic or paper,
16 are not covered. They just aren't.

17 What would be covered would be training materials that
18 the Secretary of State puts out, information about how it sends
19 out its 8(d)(2) notices under the NVRA, which I will touch on
20 in a minute. Some other examples of things that would be
21 responsive to it would be -- let me just get my list here --
22 would be internal operating procedures, certain non --

23 THE COURT: Where do I look -- okay. You may be a
24 very knowledgeable person, and presumably you were involved in
25 the drafting -- or at least at the table --

1 MR. NOBILE: Just enforcing. I'm not --

2 THE COURT: Enforcement.

3 MR. NOBILE: -- I'm not that senior.

4 THE COURT: Okay. Where do we find this kind of
5 information that you're referring to?

6 MR. NOBILE: Well, I would direct the court -- and
7 this isn't specifically delineated anywhere. And I will be the
8 first to concede that. But when you're trying to figure out
9 what -- what the -- what Congress meant by these programs and
10 activities, you look at the first part of Section 8.

11 And Section 8, which is also 42 U.S.C. 1972gg-6, which
12 is the main statute here, part A has basically five directives.
13 And one of those directives, subpart 4, mandates that states
14 maintain or have a general program that makes a reasonable
15 effort to get rid of deceased voters and people that have
16 plainly moved.

17 But further down from there, you get into part (b).
18 And in part (b) it says -- and I'm going to paraphrase here.
19 In part (b) of Section 8, it says that any state that has a
20 program or activity to protect the integrity of the electoral
21 process by ensuring maintenance of an accurate and current
22 voter registration roll for federal office shall do whatever
23 program it does in a race-neutral way or compliance with the
24 Voting Rights Act of 1965. And then it delineates --

25 THE COURT: What are you reading?

1 MR. NOBILE: Excuse me.

2 THE COURT: What section?

3 MR. NOBILE: The statute at hand here, Section 8, or
4 1973gg-6, subsection -- subsection (b).

5 THE COURT: Confirmation voter registration?

6 MR. NOBILE: Correct. If you read that language and
7 then you section 8(i), you'll realize that the drafters -- the
8 language almost is identical.

9 THE COURT: You are saying 8(i), which is the
10 disclosure provision.

11 MR. NOBILE: Correct. Yeah. I'm sorry. It's just --
12 it's a bad habit, but it's subsection (i) that we're talking
13 about, the public disclosure requirement.

14 THE COURT: Right.

15 MR. NOBILE: If you read that language, you'll --

16 THE COURT: Confirmation voter registration, you're
17 reading it -- what is the language within (b) -- you said
18 (b)(1) -- there's 1, 2, (a), (b) --

19 MR. NOBILE: "Any state program or activity to protect
20 the integrity of the electoral process by ensuring the
21 maintenance of an accurate and current voter registration
22 roll."

23 THE COURT: "Shall be uniform and nondiscriminatory"?

24 MR. NOBILE: Yes, and goes through there. And so what
25 I've presented to the court is basically 8(i) is a way for --

1 or public disclosure requirement under (i) is a way for
2 advocacy groups to audit how voters are being removed from the
3 rolls and whether it's being done in a race-neutral fashion.

4 It doesn't give people an opportunity to go audit
5 voter participation. Voter participation has nothing to do
6 with Section 8. Let me rephrase that. Voter participation has
7 only one realm of relevancy with respect to this statute, and
8 that is after someone sends out -- after the state or the --
9 and as they pointed out, the circuit clerk sends out the notice
10 of -- or the triggering mechanism that there has been a change
11 in the -- change of address.

12 Now, circuit clerk sends Judge Atlas a notice saying,
13 *We understand you've moved to Houston. You've joined the*
14 *federal bench, and you're no longer registered to vote here.*
15 You don't respond and then you don't participate in the next
16 two federal general elections, then you can be moved off the
17 rolls. You can be purged.

18 Now, what we need to keep in mind here is what we've
19 got is a primary election. So the participation in a primary
20 election or the lack thereof is not relevant to list
21 maintenance practices. And I apologize for jumping around, but
22 when you get to part (c), subsection (c), that's a safe harbor.

23 THE COURT: Yeah. Great. But the statute is a little
24 broader than just voter removal programs and confirmation of
25 people not being kicked off unfairly or discriminatorily.

1 MR. NOBILE: Correct.

2 THE COURT: I thought that it was that -- well, (a) --
3 subsection (a) of the statute says that administrator --
4 administration of voter registration for elections for federal
5 office, in that regard each state shall, one, ensure that any
6 eligible applicant is registered to vote in an election -- and
7 they tell you different ways you can register. And I guess
8 this is saying -- it tells you -- it tells the state who they
9 have to accept for registration.

10 MR. NOBILE: Part (a) has five affirmative
11 responsibilities.

12 THE COURT: Right. One, register to vote with four
13 subsections; two, require appropriate state election officials
14 to send notices of disposition of applications to register.
15 Right?

16 MR. NOBILE: Correct.

17 THE COURT: Three, name of registrant may not be
18 removed except -- and then we're into some other things. Four,
19 conduct a general program that makes reasonable efforts to
20 remove names. So they're supposed to remove names of people
21 who were dead or whatever.

22 MR. NOBILE: They have an affirmative duty to remove
23 deceased voters and change --

24 THE COURT: And changed residence.

25 MR. NOBILE: And changed residence.

1 THE COURT: And, five, inform voters of requirements.

2 MR. NOBILE: And then --

3 THE COURT: Six, ensure the identity of voter
4 registration agency. I don't understand --

5 MR. NOBILE: Six is basically if you're -- if you're
6 applying for welfare and you get your voter registration
7 application that way, the world should not know that you are
8 getting subsidies.

9 THE COURT: Okay. The point -- the point of all that
10 was that if NVRA tries to ensure the proper, fair, open
11 registration of new voters in one section -- one multiple-part
12 section and then tries to require upkeep of those voter lists
13 and then goes into more specifics about removals, et cetera,
14 your point being it's all about the lists and that this section
15 on public disclosure is with reference to these preceding
16 sections and --

17 MR. NOBILE: With one --

18 THE COURT: -- context --

19 MR. NOBILE: With one in particular. With one in
20 particular. States have to do -- they have -- at a bare
21 minimum, they just have to remove deceased voters and people
22 under part 4 or subsection 4.

23 And then part (b) provides that if you decide to do
24 more than the minimum, if you do more than the minimum, then
25 it -- it needs to be race neutral and no one should be removed

1 for failure to participate in federal elections and then it
2 goes through it.

3 And then later on at the end of the statute, it gives
4 advocacy groups a right to examine those list maintenance
5 practices. You know, who are you sending 8(d)(2) notices to?
6 Are you just sending them to a zip code where everyone's got,
7 you know, low socioeconomic stuff -- situation? Is it, you
8 know, an area of town where there's known to be a large, you
9 know, Democratic support or Hispanic support and so on and so
10 forth?

11 And so when you're reading section (i) and you're
12 curious about the articulation of the public disclosure
13 requirement, it is helpful to reference part (c) to understand
14 sort of where that language is coming from.

15 THE COURT: The fourth Circuit is quite broad in its
16 definition of program and activity. Primarily, the -- there
17 was only one type of document being requested. There wasn't
18 the whole gamut that we have here. But the point is, they
19 didn't seem to restrict it quite this way.

20 MR. NOBILE: And I do -- I do recognize that, your
21 Honor. I mean, this is not the best distinction, but in that
22 context you're dealing with specific -- specific concerns and
23 complaints about discrimination involving historically black
24 university.

25 THE COURT: Right.

1 MR. NOBILE: And when you are dealing with that in the
2 federal context, you know, if there's -- if there's colorable
3 claims, then federal courts are very forthcoming about the data
4 that's available to get to the bottom of it. Now, you know,
5 not to -- I would -- I would suspect if they --

6 THE COURT: This is all about completed voter
7 registration applications. That's what --

8 MR. NOBILE: In *Long*?

9 THE COURT: -- *Long* was about.

10 MR. NOBILE: Uh-huh (indicating yes). And, I mean, I
11 would suspect that if the court -- the Fourth Circuit and the
12 district court in *Long* had been faced with the breadth of
13 information that's demanded in this situation, their claims --
14 their holding would have been much more circumspect than it is.
15 You know, I'm actually sort of guffawed at reading it, but
16 that's being it.

17 I want to echo one point that Mr. -- that the State
18 emphasized is that there's another public disclosure
19 requirement under the federal law and that is the one for the
20 Attorney General. And that one is 42 U.S.C. 1974, and I think
21 it's 1974a through b maybe or c. But in it, it speaks
22 specifically about voter registration and the access of voter
23 registration. And that is from the Civil Rights Act of 1960.

24 And the way that True the Vote is advocating in this
25 situation is that they're basically asking for a broader right

1 to public -- to disclosures than the law enforcement
2 disclosures created under the Civil Rights Act. And not only
3 that, in the Civil Rights Act version of the disclosure
4 requirement, there is a penalty for the Attorney General to use
5 it in anything other than specific context: Grand jury
6 proceedings, subpoenas, whatnot.

7 As the court recognized earlier, there is no
8 limitation on True the Vote's --

9 THE COURT: Use of this information --

10 MR. NOBILE: And I'm not trying to suggest that
11 they're going to do anything untoward, but it's not so much --
12 it's not just True the Vote you're worried about it. It's the
13 next person or the marketing group that comes out and demands
14 all this information.

15 THE COURT: Do you know of any statute -- the witness
16 said that -- Ms. Engelhart said that she didn't think they were
17 allowed to use this information for commercial purposes --
18 Engelbrecht. Sorry. And I wondered if that was true of anyone
19 who requests information under the NVRA or if it is somehow
20 because of the 501(3)(c) characteristics of True the Vote or
21 what.

22 MR. NOBILE: To be candid, your Honor, I have -- I'm
23 not saying she's wrong. I just don't know. I don't know of
24 one. I don't -- I certainly don't know of one under the NVRA.

25 THE COURT: Okay. Well --

1 MR. NOBILE: And that --

2 THE COURT: -- I'm interested in that.

3 MR. NOBILE: I mean, it seems to be a good policy.

4 And, you know, if I was in their position, I would -- I would
5 put it under a very encrypted storage location to make sure I
6 don't get hacked, but --

7 THE COURT: Yeah. But I'm not -- again, I'm not
8 trying to saying that True the Vote would do anything with it.

9 MR. NOBILE: Of course.

10 THE COURT: My hypotheticals earlier and again my
11 concerns now, truthfully, I'm not worried about them in
12 particular by any means. They may be more honest and, frankly,
13 careful than anyone else around. I'm worried about the fact
14 that the interpretation being requested means that anyone can
15 come in and get this information, an individual can, and an
16 individual with money can pay that, quote, unquote, reasonable
17 fee and then spread this information around the universe.

18 And I'm asking the parties what restriction is there
19 in this statute or some other, because the request for
20 interpretation here will be used by others and I need to be
21 sure that this is an accurate reflection of what Congress
22 intended.

23 MR. NOBILE: You know, I mean, I'm not going to say
24 that -- I mean, voter registration -- a copy of the voter
25 registration list -- of the eligible voter registration list I

1 would concede is covered under the public disclosure. But I --
2 you know, beyond that, I don't know that applications are, and
3 I don't know that the redaction's a real conflict.

4 And so I think when recognizing that the concerns
5 about the affirmative duty to protect the data or limit its
6 dissemination is -- makes more sense. You know, you've got --
7 you've got the ability for them to demand training materials
8 and policies and procedures for the state on how they send out
9 notices, to the AV2. How do they pick people, you know?

10 I mean, in Texas, for instance, your Honor, I believe
11 every two years you get a new voter card. And if that voter
12 card bounces back, the election registrar in Texas sends you
13 out a AV2 notice. And if you don't participate in four
14 elections, you're off the roll. And that -- that's perfectly
15 legit here.

16 But in Mississippi -- you know, that's a very
17 expensive program and, you know, I don't -- I don't know, you
18 know, what the policy decision is behind that; but I would
19 imagine it's a huge expense for the state to undertake. So I'm
20 not sure I really want to harp on the actual text of the
21 language. You know, there's a number of other things I could
22 talk about.

23 But I do want to touch on just one other thing that
24 the court touched on. You know, voter eligibility or
25 registration eligibility, you know, ten times out of ten times

1 is the same thing as eligibility to participate in an election.
2 In this situation, there's a disconnect because -- well,
3 there's an alleged disconnect in this situation because of the
4 primary issues and the allegations about participation.

5 And so I think, you know, your eligibility to be on
6 the voter rolls or voter registration list is not the same
7 thing as the eligibility to participate in an election. And as
8 you pointed out, you can be a perfectly eligible registrant and
9 still run afoul of their interpretation of that law. And
10 then -- let's see. Okay.

11 And then, you know, I represent the Republican Party.
12 So I want to make sure I make this clear, and I know that the
13 court has -- has recognized this. The Republican Party has no
14 compliance responsibilities under the NVRA. It's not a state
15 under 1973gg-1. It's not a chief election official under
16 1973gg-8. And, you know, it's not -- it has no list
17 maintenance responsibility under Section 8 that we've
18 discussed. It's just not responsible for anything under the
19 NVRA.

20 THE COURT: How would you -- how would you divide
21 the -- you said eligibility to be on the roll is not the same
22 as who votes or not the same as certifying an election.

23 MR. NOBILE: I did election enforcement for eight
24 years. I've never run into a situation where there's been a
25 disconnect. But I do agree that here you can be a perfectly

1 eligible registrant, and under their interpretation of the
2 law -- and that is according to the AG opinion. I'm not
3 discrediting or not trying to, you know, criticize him for it,
4 but you can be considered ineligible to participate in the
5 election. And that's not the same thing as being an ineligible
6 registrant or ineligible voter registrant. It's never been a
7 distinction I've ever recognized or ever thought about until
8 today. But to be honest with you, I've never run into -- there
9 aren't too many places that do open primaries anymore, you
10 know, not -- not like we do down here.

11 THE COURT: Okay.

12 MR. NOBILE: So other than that, that's it. That's
13 all I have, your Honor. Thank you.

14 THE COURT: Thank you.

15 **ARGUMENT ON BEHALF JEFFERSON DAVIS COUNTY ELECTION COMMISSION**

16 MR. SANDERS: Your Honor, if I could, just briefly,
17 I'm going to lower the elevation of the discourse and for that
18 I apologize, but I'll make up for it by being brief, I hope.

19 THE COURT: Could you pull the mic a little closer to
20 you.

21 MR. SANDERS: Yes, your Honor. I'm sorry. I know
22 that you -- I know you know what I'm going to say and that is
23 there's not --

24 THE COURT: *Yo no Alamo.* That's what it's -- that's
25 what it's called in Texas.

1 MR. SANDERS: Say again?

2 THE COURT: *Yo no Alamo.* It means "I wasn't even
3 there" --

4 MR. SANDERS: Well, that's right.

5 THE COURT: -- in Español.

6 MR. SANDERS: Well, and the election commissions --
7 the county -- we are bystanders here. I guess we're kind of
8 standing nearby, but we weren't really there. They've made not
9 a request to any of us. They have not even pretended to have
10 any proof against any of the election commissions. They try to
11 bring us in --

12 THE COURT: What's the role of the election
13 commission, in your mind? And what is the -- what's the role
14 of the election commission?

15 MR. SANDERS: It's -- their primary roll, your Honor,
16 is to maintain the records and to conduct purges. That's the
17 practical, on-the-ground function that they --

18 THE COURT: So if they were, according to
19 Mr. Nobile -- Nobile?

20 MR. NOBILE: That's correct.

21 THE COURT: According to Mr. Nobile, if the lawsuit
22 were restricted or if I find that the limitations he's
23 advocated are the proper ones, then would your people be --
24 would the election commission people be the right defendants?

25 MR. SANDERS: No. We don't -- we are not the

1 registrar. We don't -- we don't keep the voting records.

2 THE COURT: Do you maintain the eligibility list, the
3 voter --

4 MR. SANDERS: Yes. We have -- we have access to all
5 the various documents and so forth. And, yes, we do. We --
6 like I say, we do maintain and try to keep the voter rolls
7 current. When we find out people have died, we purge them. We
8 do all the purging activities under the NVRA that y'all have
9 discussed.

10 But the point is the plaintiffs here have not -- no
11 county election commission has refused the plaintiffs anything.
12 It is -- all the refusals have come from the county registrars,
13 which are the circuit clerks.

14 Now, the plaintiffs in paragraphs 23 through 31 of
15 their complaint -- and there are footnotes to those
16 paragraphs -- allege that the circuit clerk is somehow an
17 ex officio member of the election commission. And Mr. Nixon in
18 his remarks and in his pleadings cited Mississippi Code Section
19 23-15-211. And if I might --

20 (DOCUMENT TENDERED TO THE COURT)

21 MR. SANDERS: I gave one of y'all a copy that says "my
22 copy" on it. I don't know which one. But, anyway, your Honor,
23 this is the section they refer to. If you'll see, Section 1(a)
24 creates a state election commission. Section 1(b) establishes
25 county election commissions. And Section 1(b) says there

1 are -- shall be five persons who are the electors in the county
2 who will comprise the election commission. And each one of our
3 county election commissioners is -- consists of five persons.

4 1(c) says, "There shall be a registrar in each county
5 and that shall be the circuit clerk." The circuit clerk, of
6 course, is a constitutional county officer. It was created by
7 the first constitution in I think it's Article VI, section 168,
8 of the most recent constitution.

9 But it is clear that from this statute that the
10 plaintiffs rely on that the circuit clerk is not a member of
11 the election commission. He's is a separate entity that -- you
12 know, he's not one of the five.

13 So we think that we should be dismissed. I'm speaking
14 specifically for Jeff Davis County. When we filed our response
15 to the TRO, we asked to be dismissed. We have no business
16 being in this lawsuit. And there are a bunch of lawyers over
17 here and there are a lot of hourly meters running. And Jeff
18 Davis County is a poor county and they need to be cut loose.

19 And so in the total absence of any attempt even by the
20 plaintiffs to give any evidence that the Jeff Davis Election
21 Commission has done anything wrong, we ask that we be dismissed
22 from this action.

23 And we also -- in our response, we think that we were
24 sued I don't want to say frivolously, but I think the
25 plaintiffs did not do their due diligence that they should

1 have. If they had, they would not have sued us. And we have
2 been sued I think wrongfully. We have incurred attorneys'
3 fees. In our response to the TRO, we asked that we be
4 dismissed and be granted attorneys' fees. But --

5 THE COURT: If they had sued the circuit clerk, would
6 you have the same argument?

7 MR. SANDERS: No, I would not.

8 THE COURT: And who -- are you the one who said that
9 the election commissioners are not suable entities under
10 Mississippi --

11 MR. SANDERS: No, I have not made that --

12 THE COURT: Okay.

13 MR. SANDERS: -- I have not made that argument.

14 THE COURT: Okay. If the plaintiffs were to
15 substitute the circuit clerk for the election commission, would
16 that solve your problem or add them?

17 MR. SANDERS: It would solve the election commission's
18 problem, yes.

19 THE COURT: I'm having trouble -- I guess because
20 you're worried about which budget line your fee is getting paid
21 from.

22 MR. SANDERS: The election commission does have its
23 own budget. It's impacting on their budget.

24 THE COURT: That's the point.

25 MR. SANDERS: And they deserve to be dismissed from

1 this lawsuit. Now, if the plaintiffs wanted to substitute,
2 that's up to them.

3 THE COURT: Of course. But the point is the -- the
4 enforcement of any order or the benefit of any order that I
5 issued would be important to the election commission, would it
6 not?

7 MR. SANDERS: Your Honor, the election commissioner
8 follows the law, whether it's from -- the law comes from -- the
9 order comes from the Congress or from the state legislature or
10 from Her Honor. They're going to -- they're going to follow
11 the law no matter what. But they won't have to pay me anymore.
12 And I think they deserve to be out.

13 THE COURT: If the county got sued, would you be
14 hired?

15 MR. SANDERS: The fellow who left earlier would be,
16 and he's the county guy. I'm a litigator. So, yes, I'd
17 probably be back in front of you. That's all I have. Thank
18 you, your Honor.

19 THE COURT: Okay. It is getting late. A little humor
20 is always good. Who else have I got that wants to make a
21 comment? Some of you quiet ones on the back bench there.
22 Okay. Yes, sir.

23 **ARGUMENT ON BEHALF OF RANKIN COUNTY ELECTION COMMISSION**

24 MR. SLAY: Rankin County. I just simply rise to join
25 Mr. Sanders' argument and behalf of Rankin County.

1 THE COURT: I thought you were going to rise to say
2 please can we adjourn. Sorry.

3 MR. SLAY: I'm happy to do that on your behalf.

4 THE COURT: How about we do this. I think all the
5 county defendants were sued as election commissions and by --
6 according to plaintiffs, by implication their members were sued
7 in the lawsuit. And so I'm going to assume for the purposes of
8 this case that the arguments made on behalf of Jeff Davis --
9 Jefferson Davis County are being made on behalf of all the
10 counties. Is that fair? Okay.

11 And I'm not sure where this is all going to come out,
12 but it does seem to me from what I just heard that the NVRA --
13 that some of the programs or the maintenance of documents or
14 the like that the NVRA clearly covers under those sections that
15 Mr. Nobile was pointing out do fall within the bailiwick of the
16 election commission for the counties.

17 I'm not saying anybody did anything wrong. It's got
18 nothing to do with that. It's just when we're looking for who
19 it is that needs to be in the suit or who needs to be on notice
20 of whatever rulings there are, the election commissions are in
21 that group. Doesn't mean anybody committed a wrong or should
22 be held liable, but it does mean they need to know what the
23 rules are.

24 They get the rules both from the AG and from the state
25 Attorney General's Office apparently -- I mean from the

1 Secretary of State's Office. And then they may get it from a
2 court and, certainly, everybody's on notice about federal and
3 state law.

4 But I -- I'm sympathetic about the costs, but I'm
5 questioning whether it pays for us to spend a whole lot of time
6 deciding whether it's the election commission or the county --
7 or the circuit clerk in the official capacity or what that
8 should be in this lawsuit. In the real world, all of you
9 lawyers are going to be here in one form or another regardless
10 of which entity within the county government is sued. Okay.

11 So I'm not minimizing the importance of the different
12 agencies or departments. I'm only saying that I'm trying to
13 focus on what I think are dispositive issues. So I'll try
14 to -- when I write something, I'll try to address this. I
15 don't know if it will do justice to the sensitivities on the
16 human level. But I would like it to be clear that Mr. Nixon
17 said -- and I will adopt his comments -- that nobody is
18 attributing malice or some sort of criminal or other --

19 MR. WALLACE: Nefarious.

20 THE COURT: What?

21 MR. WALLACE: Nefarious.

22 THE COURT: Thank you -- nefarious motives. They're
23 just trying to get enough people in this lawsuit so that when
24 there's a ruling, whether it's now, later, or by the Court of
25 Appeals or the Supreme Court, that at least enough people are

1 on notice that it can be enforced, okay, and that people will
2 have a feel that they are bound. Okay.

3 Mr. Nixon, you can respond.

4 **CONTINUING CLOSING ARGUMENT ON BEHALF OF PLAINTIFFS**

5 MR. NIXON: Thank you, your Honor.

6 THE COURT: And I remember everybody will have briefs,
7 but I promised you time and you have it now.

8 MR. NIXON: Thank you. Thank you, your Honor. If I
9 were a Mississippi voter sitting in this courtroom today, I'm
10 not sure what I would be feeling right now. And I think that's
11 important because what I've heard is that if someone wants to
12 come in and look to see if the election result is valid, what
13 they've heard from the people they've entrusted with
14 responsibility of doing that is that *It's not my job. It's*
15 *somebody else's job. I don't have the records. I don't keep*
16 *the records. You've not sued the right person. You've not*
17 *sued the right --*

18 THE COURT: Can I cut you off?

19 MR. NIXON: Yes.

20 THE COURT: You're undermining the points that you
21 made earlier about this. I'm here and I'm super-interested in
22 legislative, statutory interpretation and things that are
23 substantive.

24 I don't -- I'm not here as a popularity contest. I'm
25 not here to side with one candidate or another. I want to be

1 perfectly clear, if there's anybody in here taking notes, that
2 I have no horse in this race on the merits of any election that
3 ever happens in Mississippi.

4 MR. NIXON: I'm not.

5 THE COURT: That is why I was asked by the Chief Judge
6 of the Fifth Circuit to come from Texas to Mississippi. So,
7 honestly, you are wasting your breath. I don't -- it's 6:15.
8 We've been going since 9. Everybody's been working super hard.
9 I'm begging you, address the statutory issues, because that is
10 my focus, please. I'm begging you.

11 MR. NIXON: Yes, your Honor.

12 THE COURT: Please.

13 MR. NIXON: We have an injury without a remedy. The
14 argument of the defendants is that there is no remedy. There's
15 no person to be held accountable, and you have no ability to
16 enforce a remedy for an injury of we don't know what magnitude.

17 THE COURT: We don't know what?

18 MR. NIXON: Magnitude. That's the policy issue. And
19 we are going to use birth dates as a reason why we are not
20 going to afford you a remedy. That's the public policy issue.

21 Now, we can talk about birth dates and the concern of
22 the court. We have briefed that to the court; but, again, that
23 public policy -- and here's what's very dangerous. We --
24 it's -- it's similar to freedom of speech. We have the -- if
25 we could say only people who will use speech properly can

1 speak, then I'm okay with it. If we could only -- but so I get
2 to judge what you're going to say before I give you or afford
3 you the right of speech. We don't do that.

4 But here the concern is *We don't know how you're going*
5 *to use birth dates. We don't know if there's something else*
6 *underhanded.* That's not in the province of the defendants nor
7 in this court to concern themselves with.

8 THE COURT: The question is statutory construction.
9 Would you agree?

10 MR. NIXON: Yes. But there's a bright line, and I
11 think that that line has been drawn for the court. Been drawn
12 for the court by Congress. Other courts have considered it.
13 It's been drawn -- even the case they cited out of Justice Gray
14 Miller -- Judge Gray Miller wrote was four square on the Fourth
15 Court of Appeals' opinion. And it dealt with Social Security
16 numbers, not birth dates.

17 THE COURT: Okay. Thank you. I haven't read it yet.

18 MR. NIXON: Yeah. Well, we -- I had a chance in the
19 time to look at it. And, really, if it's this issue of, well,
20 what's the cost, and it's -- well, you have \$1,400 per 82
21 counties, that's \$114,800. That means that only wealthy people
22 can challenge the validity of voter rolls and do that work
23 necessary to make it -- that's not good public policy either.
24 That's not the intent of the statute.

25 In Texas -- and I'm not sure about Mississippi, but I

1 will look it. But in Texas, the Attorney General has the right
2 to enforce the proper use of the information from -- that we're
3 seeking today. So in Texas when you were to obtain, the
4 Attorney General has a right.

5 And that's actually addressed in the case that they
6 cited with Judge Miller. Fine. Said we understand that this
7 the state's Attorney General has a right to go after people who
8 want to misuse the information so that is there a basis in the
9 statute to -- of some enforcement, the limitation of use and
10 enforcement by a public official against those who would choose
11 to misuse it. So that's -- all of that's been done. Your
12 Honor, I don't know if Mississippi has such a thing, but that's
13 been done.

14 So we're in a situation where it's very dangerous I
15 think to allow at every request somebody to say, *Well, tell me*
16 *why you want it and I'll decide whether or not I think that's a*
17 *good enough reason.*

18 THE COURT: I couldn't agree more. That's not the
19 conversation.

20 MR. NIXON: But the --

21 THE COURT: That's not what I'm after. The policy is
22 one thing. You are talking policy, policy, policy, policy.
23 The other side is talking policy of other types. But I am
24 trying to talk statutory construction.

25 MR. NIXON: Right.

1 THE COURT: And that is the new stuff that I haven't
2 yet heard from your side to the extent you want to respond to
3 some of these arguments that we've heard.

4 MR. NIXON: Well, I think -- for the most part, Judge,
5 I think I addressed them prior to their arguments.

6 THE COURT: Fair enough.

7 MR. NIXON: And then I think that we went through the
8 statute, the one section, and I think the court agrees it --

9 THE COURT: Don't tell me what I agree.

10 MR. NIXON: Okay.

11 THE COURT: Only because it would not be fair to
12 either side.

13 MR. NIXON: Certainly. Certainly. And I'm sorry. I
14 didn't mean to say -- probably a better way to say it, that the
15 court observed that the Fourth Circuit opinion is very broad.

16 THE COURT: Yes. That is true.

17 MR. NIXON: Okay.

18 THE COURT: Thank you.

19 MR. NIXON: And so -- and so, I mean, that's what
20 we're -- that's what we're relying upon.

21 THE COURT: Right.

22 MR. NIXON: And so we're in -- we're in a situation
23 that if we -- once again, we come back to the inescapable and
24 indisputable evidence. The information is available. Birth
25 dates are available. *All of the documents are available. We*

1 just want to redact birth dates from these documents, but you
2 can go get birth dates over here. But nobody is -- nobody
3 is -- I mean, I have heard today that I apparently have to sue
4 82 county clerks in order to get the full state set of
5 information. That's --

6 THE COURT: Actually, what you heard today from them
7 was all you have to do is ask for voter rolls from the State.
8 That's what I think you heard. That's what I heard. I mean,
9 if you want -- if you truly want to know who is eligible to
10 vote in the sense they're on the voter roll, active, inactive,
11 suspended, whatever, rejected, the voter rolls are the
12 universe, contain the universe of eligible voters.

13 MR. NIXON: That's one piece of the puzzle. And the
14 other piece is there's just -- and it's all really stuff that
15 you just print off a disk.

16 THE COURT: Is the rest -- yeah. Okay. Let's assume
17 that's true. Fine. I don't know if it is or not. The statute
18 says reasonable costs. I don't know what reasonable cost is.
19 But whatever it is, if it's \$100, Ms. Engelbrecht thought that
20 was high, but that would be a whole different ball game than
21 1400. Would you like to amend your witness' testimony when he
22 said 14,000? Do you think he could have been wrong? Because
23 it's contrary to the pretrial information. I'll let you think
24 about that.

25 MR. NIXON: Right. Right. I mean, initially we were

1 informed that it was -- that it was 1400. And then when we --
2 as he went through and said, *Wait, there's this many pages*
3 *and --*

4 THE COURT: Okay.

5 MR. NIXON: -- wow --

6 THE COURT: If you want to stick with the 14,000,
7 that's fine. I just wasn't sure.

8 MR. NIXON: But it's 50 cents a page and how many
9 pages. And that's -- I mean --

10 THE COURT: Right. Okay. But more importantly, aside
11 from the footnote, the issue really seems to be that you
12 cannot -- your clients cannot mount voter challenges of
13 elections after the election without the materials you're
14 seeking.

15 MR. NIXON: That's right.

16 THE COURT: Okay.

17 MR. NIXON: And, you know, a good way to describe this
18 is that -- and I think that everybody's been really puzzled by
19 this -- if we had asked for one voter, let us have the one
20 voter registration and this information off of one voter, would
21 anybody be upset?

22 THE COURT: No. You probably would have gotten it.

23 MR. NIXON: Right. But the issue is, well, that's
24 clearly legal. Right? Well, the -- well, why is it when you
25 ask for a whole lot of legal information it suddenly becomes

1 illegal? If you're doing a legal thing many times over,
2 because you're doing it a lot doesn't make legal activity
3 illegal.

4 THE COURT: Uh-huh (indicating yes). I understand.

5 MR. NIXON: It's a whole lot of legal activity.

6 That's where we are. But, once again, we cannot avoid the
7 problem of accountability. We have -- because if we do not
8 address this, we invite additional problems because there's no
9 remedy. There's no -- there's no entity to hold accountable.
10 There's no group, workable group to hold accountable. There's
11 nothing to be done. And when that happens, why vote? Why --
12 why have elections?

13 THE COURT: The Constitution -- under the Equal
14 Protection Clause you seem to think you have a voter dilution
15 claim. The Voting Rights Act gives -- and the voter dilution
16 claim is based on double -- what your witnesses call double
17 voting, what I think I would prefer to call crossover voting.
18 But the point is --

19 MR. NIXON: And any absentee ballot issues and --

20 THE COURT: Yes. And then some unsupported or
21 maybe -- I don't know what to call it, erroneous or --
22 unsubstantiated votes by absentees.

23 MR. NIXON: There are mistakes in every election.
24 We're not here because these are standard mistakes.

25 THE COURT: Yeah. Perfection is probably not

1 achievable in this context. But the hope is that the election
2 ballot process is darn close to perfection.

3 The point is that we have a Voting Rights Act, we have
4 civil rights laws, we have other statutes, the Freedom of
5 Information Act, we have Open Records Acts from -- for
6 different -- in different context. What is it that you think
7 the NVRA added to the -- to the mix, particularly to the Voting
8 Rights Act or straight up under the Constitution?

9 MR. NIXON: Sure. The -- and I think it's important
10 you mentioned the Freedom of Information Act or FOIA request.
11 FOIA was around a long time before the NVRA showed up.

12 THE COURT: Yeah.

13 MR. NIXON: And so in the FOIA -- FOIA documents
14 certainly did call for redaction of identifiers and may even
15 require redaction of birth dates. And -- but when it came --

16 THE COURT: It says personal information.

17 MR. NIXON: Personal. When it comes -- when it
18 comes -- so that statute existed. When Congress passed the
19 NVRA, it did so without the same exemptions. It did so without
20 the exceptions of personal information. In fact, it just did
21 the opposite. Personal information, name, address, birth dates
22 need to be disclosed. They did so in -- in knowing about and
23 aware of the prior enactment of Freedom of Information.

24 So what I think that what the NVRA did, I think it had
25 many purposes, one of which is the exact purpose for which

1 we're trying to employ it today. Now, there are other noble
2 purposes in it, to make sure that people aren't being purged
3 who should not be purged and that there are other ways to
4 ensure and protect people's right to vote. And it certainly
5 made access to voter applications easier.

6 But election integrity is an important aspect of the
7 statute. And Congress is aware of that. Anybody who gets
8 elected to office is aware of the issues involving elections.
9 They're messy and unfun for those who have ever had to run.
10 It's just the way the world works and it's -- so. But the
11 point is if we're going to have -- attempt to have a democracy
12 run by people who decide who their leaders are, it's -- we've
13 got to try to do as well as we can ensuring integrity. That
14 decision on how to do that was made for us when the statute was
15 passed.

16 So what we -- what we are here today to do is a very
17 narrow request, most of which we could probably obtain, the
18 bulk of it, not the -- not the absentee ballot applications and
19 envelopes, but most everything else is probably able to be
20 printed on a disk before I can leave the courthouse and get to
21 my car. It's that -- for very little cost.

22 THE COURT: And the absentee -- let's focus on that
23 for a minute. The absentee applications and envelopes: How
24 does that relate to voter lists?

25 MR. NIXON: In what respect are you asking your

1 question?

2 THE COURT: I'm asking it in the most general way you
3 want to answer.

4 MR. NIXON: Okay. The -- the -- if someone shows and
5 asks to vote absentee -- remember in Mississippi it's this
6 limited process. If somebody asks to vote or they have walk-in
7 or what the term was, show up absentee or whatever, but you do
8 it early, those ballots are set aside. You can still come and
9 vote on election day.

10 THE COURT: You don't get an absentee ballot unless
11 you're on a voter roll. Correct?

12 MR. NIXON: That's correct. And I don't know if there
13 is an opportunity for an inactive voter or someone who has
14 moved or changed their name -- you know, almost half of
15 Americans in their lifetime will change their name. That's --
16 I mean, that's -- the birth dates is one thing that don't
17 change.

18 THE COURT: Right.

19 MR. NIXON: So -- so the absentee -- the absentee
20 ballot is all -- is all part of the process of who's eligible
21 to vote on election day. If you -- if you've asked to vote
22 absentee, do you -- are you able to show up and vote in an
23 election?

24 Say your trip got canceled or you're not having to go
25 out of town or -- I mean, what's -- what's this -- you know,

1 are you able to be challenged? If someone -- if they -- you
2 know, they're supposed to call out your name, "John Smith," as
3 they open your absentee ballot and someone says, *No, no, no. I*
4 *know John Smith and he's in his driveway, you know, mowing his*
5 *yard. He's not -- he's here. Don't count it.* He may -- you
6 know, they can challenge that.

7 So there's a -- it's -- it is all part of the fabric
8 of how the election is contested -- is conducted. Excuse me --
9 conducted in who's eligible, when they're eligible, are they
10 currently eligible, are they currently eligible for which --
11 for the runoff and -- and so it's a -- it's a -- it's a
12 complete picture. And you need those five things to make a
13 complete picture. And when you have a complete picture, you
14 can do your work. And you can -- and it's -- I think
15 Ms. Engelbrecht said you can either debunk the myths or make a
16 point.

17 You know, a lot -- a lot of people have suggested
18 there are problems in a part- -- in this particular election.
19 So either we can know that that's true or prove that that's
20 wrong, but it's -- but just as you said, you don't -- I mean,
21 you're agnostic as to this election. So is True the Vote.
22 True the Vote just wants to get to the answer. That's what it
23 does. That's what its purpose does. It's about validating the
24 voting process and just getting to the answers.

25 THE COURT: Fair enough. Thank you.

1 MR. NIXON: All right. Is there anything else I can
2 answer for you? I just want to --

3 THE COURT: I do want the answer to the questions I've
4 asked during this hearing. So whatever I may have asked, I
5 don't think I need to repeat them. I'm sure I couldn't do that
6 accurately anyway.

7 MR. NIXON: And let me just say, I mean, you know, one
8 last -- one last point --

9 THE COURT: And then we need to create a schedule so
10 we can all go home.

11 MR. NIXON: Certainly. The state's Republican Party,
12 we didn't mean to --

13 THE COURT: Upset them so much?

14 MR. NIXON: -- put a bur under their saddle. But --
15 and we haven't -- there's -- he keeps saying we haven't accused
16 them of anything, and he's right. But how do you -- the reason
17 they're here is because it's their primary. We haven't accused
18 them of anything. Unfortunate press release and I think that
19 may have been misworded or something, but -- okay. So a bur
20 got put under their saddle.

21 But we're not -- and there's a reason why we're not
22 asking for immediate relief from the Party. We're asking for
23 immediate relief from whoever has these records and --
24 particularly I think the Secretary of State and the county
25 clerks and the election commissions or whoever. But, I mean,

1 that's who we're asking relief from. And we understand the
2 Party currently doesn't have these records. But the point is
3 is that this is their primary.

4 THE COURT: I understand.

5 MR. NIXON: They're just a -- I mean, how could we
6 fashion a -- they need to be here in order to protect
7 themselves if an interest of theirs becomes an issue. That's
8 why we asked them to please come in.

9 We haven't said they've done anything bad. In fact,
10 we haven't said anything because really -- nobody's really done
11 anything bad. We just have a disagreement on what the law is,
12 which is fair. But as to Party, it's their primary. And to
13 the extent that the primary is affected in some respect, we'd
14 like them to be here. In fact, I think that they, you know,
15 would like to be here too.

16 THE COURT: Right.

17 MR. NIXON: So, Judge, we will address answers. And
18 we're prepared to do a briefing schedule now if you would like
19 to.

20 THE COURT: That would be great.

21 (COUNSEL CONFERRED)

22 MR. NIXON: Judge, you asked for all of the other
23 incident reports related to the counties that have been sued
24 and we have those marked as TTV-1 through 38. I don't -- and
25 you asked us to file them this evening.

1 THE COURT: No, I didn't say they had to be filed
2 today.

3 MR. NIXON: Oh, okay. That's good because --

4 THE COURT: I just said file them at some point.

5 MR. NIXON: Yeah, because we tonight -- the 5:30 deal
6 was when our plane left. I think that's what maybe --

7 THE COURT: I missed a plane also.

8 MR. NIXON: We do not have access to some --

9 THE COURT: It's no problem.

10 MR. NIXON: -- ability to --

11 THE COURT: It's really no problem.

12 MR. NIXON: Okay. Very good. Thank you, Judge.

13 THE COURT: Okay. Thank you. Let's talk about
14 briefing. The plaintiffs have initiated the process with their
15 TRO and preliminary injunction request. It has been responded
16 to by the Republican Party and Jeff Davis also, but most people
17 have not -- defendants have not responded.

18 The State and some of the others mentioned something
19 about motions to dismiss. I really would like to focus on the
20 preliminary relief that's been requested and the statutory
21 interpretation and, you know, the elements relating to all of
22 that. Anybody who wants to preserve their rights for dismissal
23 is fine.

24 I guess what I'd like to say on that is watch out what
25 you wish for because you just may get it, or not, but you may

1 wind up with more parties in this case, namely, the circuit
2 clerks. So I'd like the parties to talk among themselves to
3 decide whether you just want to make some arrangement,
4 agreement about who the proper defendant should be.

5 Most of the defendants don't seem to be complaining,
6 but Jeff Davis is. And they have a right to and anyone else
7 has a right. But I guess there needs to be a mediator, and
8 these skills are of limited value here. But the point is less
9 is more. Honestly, if you spend a fortune on whether it should
10 be the county clerk, circuit clerk, the executive committee,
11 the election commission, the commissioners, if it's important,
12 do it; but if it isn't, see if you can make some sort of a
13 stipulation.

14 That said, those briefs have to be separate. If
15 you're filing a brief about the wrong party, et cetera, you
16 file that separately. That's a motion to dismiss or something
17 to that effect. Your page limit is ten pages.

18 To the extent that there is briefing on the merits of
19 the response to the summary judgment or the preliminary
20 injunction motion, I would like as much of a consolidated brief
21 as you can stand. The page limit -- and I will be flexible
22 because, frankly, there are a variety of arguments. I don't
23 know what you want; but when you want it, ask for it and file
24 your brief at the same time. If it's a problem, I'll let you
25 know.

1 More likely than not I'll grant it, but it does need
2 to be in 13 font and double-spaced and make your footnotes
3 legible. Some of you guys are filing your footnotes in like a
4 10 font and then when I get it on ECF, it's 8 font. I mean,
5 they're almost not readable. This is not a joke. And,
6 frankly, I have really good eyes. I mean, I'm reading
7 everything, but footnotes need to be in 12 font. Briefs need
8 to be in 13 font. I hate to be so specific, but it's required.
9 Those of you who use Word, reformat your footnote font because
10 it's really small and very, very difficult. That's a tip for
11 everything you file in federal court.

12 Once the defendants have filed and plaintiffs
13 presumably will want to reply, unless the plaintiffs want to
14 put in something that is -- I have your trial briefs. I have
15 what you've already filed. It's very comprehensible. I get
16 it. You do not need to file that stuff again. But if you want
17 to file a supplement in light of what you've heard as opposed
18 to a reply, I would -- I would consider that. Or you can just
19 file a reply, and then I guess I'll have to give a surreply.
20 So I'm open to your suggestions, but I want to -- I want these
21 issues of statutory construction and my other questions
22 answered in written form in the next few weeks.

23 What does the defense want? What do the plaintiffs
24 want?

25 MR. NIXON: Judge, I understand you've asked the

1 defendants to kind of lead off in the briefing here.

2 THE COURT: Well, I've asked them to respond to your
3 motion because I haven't gotten anything substantive from them.
4 If you -- other than the Republican Party, which is separate.

5 MR. NIXON: We are happy to respond and supplement.

6 THE COURT: Do you want to reply as opposed to
7 supplement?

8 MR. NIXON: Yes. Yes.

9 THE COURT: Okay.

10 MR. NIXON: I'd like to do that.

11 THE COURT: Okay. Do you want to -- how do you want
12 to handle this, guys?

13 MR. PIZZETTA: Your Honor, an off-the-cuff suggestion,
14 could we say -- we'd like to get the transcript and we probably
15 do --

16 THE COURT: I think we're going to have it pretty
17 soon.

18 MR. PIZZETTA: And we do need to help you by working
19 to see how much of a brief we can all join. What if we filed
20 on August -- Friday, August 15th, and do --

21 THE COURT: How many weeks is that? I'm at a little
22 bit of a loss because I don't have a calendar and I can't get
23 into the calendars here.

24 MR. PIZZETTA: Is that three weeks from -- we'd work
25 with the counties to see how much of one brief we can put

1 together and make it a better brief.

2 THE COURT: Well, I really wanted it sooner. We're at
3 the 24th. How about this? How about the State and the
4 Republican Party file something in two weeks, and the counties
5 can get together and do whatever they want. I mean, honestly,
6 the counties are pleading poverty. I'm not figuring that
7 they're going to be adding that much to the mix on the
8 statutory construction. I think most of their examination was
9 about, you know, *I didn't get the request* or whatever, you
10 know. The testimony stands on its own.

11 And it's important, but that's not -- I get that.
12 I've heard it. I understand where they are. I'm interested
13 more in what you've got. You'll get a surreply, but --
14 because, really, this is the first time any substance is going
15 to come from the State on statutory construction, which is
16 really what this case is about, and so I could use it sooner.

17 MR. PIZZETTA: Your Honor, we will make August 8 work.

18 THE COURT: August 8th. Okay. I'll live with that.
19 And the counties, you too, you agree with each other, but don't
20 worry about the State. The one thing that I want from the
21 counties is some -- you have a tight page limit, counties,
22 because -- but you can -- if you file jointly, you can go
23 beyond the ten pages. I'm not going to give you a page limit.
24 Use your judgment, but less is more. Okay.

25 With the State and all the arguments you have

1 articulated and you're proposing, you do need to figure that I
2 will read cases and statutes; but to the extent you think
3 there's something important, do give me pin cites. And it is
4 okay to give me an appendix with statutes attached or -- you
5 know, regulations really. Statutes I can find easily.

6 But the point is file it in Word or Word Perfect. You
7 know how you PDF it. When you do that, our system hyperlinks
8 now. It's really awesome. So the point is that I don't need
9 things that are easily obtainable like case cites -- I mean,
10 case cites, but I don't need the copies of the cases. I need
11 the cites. And so, anyway, the 8th will work.

12 Plaintiffs, what are you thinking?

13 MR. NIXON: We can respond in a week.

14 THE COURT: Okay. The 15th would be good. I would
15 like that. Okay. Let's do it that way. And I may have you
16 send copies by e-mail to my law clerk so that I can see them
17 when they're filed.

18 MR. NIXON: We'll do that. I think we have your --
19 that information from your local rules.

20 THE COURT: Yeah.

21 MR. NIXON: Okay.

22 THE COURT: Well, you don't have my law clerk. I'll
23 give that. I'm not doing it on the record.

24 MR. NIXON: Your Honor, Judge, if it helps the
25 counties, if it helps the counties -- if it helps the

1 counties --

2 THE COURT: The counties?

3 MR. NIXON: -- the counties and the -- and the county
4 election commissions, if the counties or the counties' election
5 commissions agree to be bound by whatever the court binds the
6 Secretary of State, I don't need them in the case. Yeah, I
7 don't need anything.

8 THE COURT: Okay. Well, that's the kind of thing I
9 want y'all to work out. I'm not forcing it. I'm not requiring
10 it. Everybody should make their informed decision. But that
11 kind of approach might make sense from where I sit.

12 MR. PIZZETTA: Your Honor, did you mention a surreply?

13 THE COURT: Yes, I did.

14 MR. PIZZETTA: And if so, with that, if it's 8th,
15 15th, 22nd, no later than the 22nd?

16 THE COURT: 21st.

17 MR. PIZZETTA: 21st will be.

18 THE COURT: Okay. Anything else? Okay. Thank you
19 all very much. This was very interesting, very informative,
20 and I really appreciate the hard work that went into making
21 this hearing happen in one day. Thank you. You're excused.

22 If there are exhibits that you have that are
23 originals, bring them up here. I do have exhibits -- well,
24 wait. Oh, I'm so sorry. Exhibits 1 through 10 that the
25 plaintiff -- or 1 through 9 that the plaintiffs preidentified

1 in the record, they were not all offered I don't believe.

2 MR. NIXON: No. That's -- that's correct.

3 THE COURT: Okay.

4 MR. NIXON: But for a variety of reasons.

5 THE COURT: Okay. Fair enough. And the ones that I
6 marked in evidence that were handled today in the hearing are
7 the ones I have in the record for the purposes of this
8 injunction.

9 MR. NIXON: 9 was offered I believe.

10 THE COURT: Yes, it was.

11 MR. NIXON: And it was admitted.

12 THE COURT: If you want, we can -- I think for the
13 sake of the staff, let's go -- well, okay. I'll just call them
14 out. Defendants' 1, 2, 3, 4 are in. Defendants' 5, 6, 7.
15 Plaintiffs' 5, 10, 4, 9, 12. Did I say 9?

16 MR. NIXON: Yes.

17 STAFF ATTORNEY: 11 also.

18 THE COURT: I said 11. I'm not sure which one 9 was.
19 I didn't say it.

20 MR. WALLACE: 9 was -- 9 was the letter from Gail
21 Parker and the notes of Colonel Harding. And you admitted his
22 notes, and you admitted her letter with some restrictions.

23 THE COURT: Okay. 9, then. I'm having trouble
24 finding it. But if you say so, it's on the record and it's in.
25 I'm just not seeing it in my notes for some reason, which is

1 not -- if I was dealing with it with you, then that's the
2 reason. Okay. 9 is in. Thank you all. 9 is in, as
3 indicated. Thank you all again.

4 (PROCEEDINGS CONCLUDED)

CERTIFICATE OF REPORTER

I, MARY VIRGINIA "Gina" MORRIS, Official Court Reporter, United States District Court, Southern District of Mississippi, do hereby certify that the above and foregoing pages contain a full, true and correct transcript of the proceedings had in the aforementioned case at the time and place indicated, which proceedings were recorded by me to the best of my skill and ability.

I certify that the transcript fees and format comply with those prescribed by the Court and Judicial Conference of the United States.

This the 28th day of July, 2014.

s/ Gina Morris
U.S. DISTRICT COURT REPORTER